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PETITION FOR CERTIORARI

No. 963

IN THE

SUPREME COURT OF THE UNITED STATES

1957-1958 Term

Henry Merritt Farnum,
Petitioner
v.
State of Connecticut
and
New York State Department of Mental Hygiene,
Appellees

Henry Merritt Farnum,
Petitioner

70 W. 46th Street,
New York 36, N.Y.

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR A WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Henry Merritt Farnum,	*	
	*	
Petitioner	*	Civil Actions,
	*	Court of Appeals
v.	*	for the Second
	*	Circuit,
State of Connecticut, and	*	
	*	File Numbers:
New York State	*	24944, and
Department of Mental Hygiene,	*	24945
	*	
Appellees	*	

Consolidating:

Henry Merritt Farnum
v.
State of Connecticut,
On appeal to United States Court of Appeals
for the Second Circuit, File # 24944; and

Henry Merritt Farnum
v.
New York State
Department of Mental Hygiene,
On appeal to United States Court of Appeals
for the Second Circuit, File # 24945.

Petitioner prays that a writ of certiorari issue to review the judgments of the United States District Court for the District of Connecticut on September 23 and October 23, 1957, and of the United States District Court for the Southern District of New York on November 7, 1957, each judgment and opinion now on appeal, with original documents of record in each case, insofar as certified, filed and each case docketed in the United States Court of Appeals for the Second Circuit on December 16, 1957.

(Footnote, January 23, 1958, H.F.)

Additional cases are now pending in the District Court for the Southern District of New York, with issues of law and fact in common with the cases consolidated in this petition. Such issues include Amendment IX, U. S. Constitution. Those cases are:

Henry Merritt Farnum v. International Association of Machinists, Civil No. 129-88, filed by complaint on January 21, 1958; and

Henry Merritt Farnum v. New York City Department of Hospitals, Civil No. 123-316, filed by complaint on August 19, 1957.

CITATIONS TO OPINIONS AND JUDGMENTS BELOW

The oral rulings, and the judgment of Chief Judge J. Joseph Smith of the United States District Court, District of Connecticut, Conn. R. 18-20, 40, are unreported and are printed in Appendix Chereto, infra, pp. C-1 and C-3.[1] His Memorandum of Decision on Motion to Alter and Amend Judgment, Conn. R.44, is unreported and is printed infra, p. C-4.

The memorandum of Judge Sylvester Ryan of the United States District Court, Southern District of New York, NYS R.23, is unreported and is printed infra, p. C-5. The order by Judge Ryan on plaintiff's Motion for Supplemental Certification is unreported and is endorsed on the motion, infra, p. C-6; NYS R.47.

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[1] In this petition, each letter designation followed by page #, for example "p. C-1", indicates the corresponding Appendix.

JURISDICTION

In each of these two cases, plaintiff's application for appointment of a three-judge court was denied, and defendant's motion to dismiss the complaint was granted.

The judgment of the District Court, District of Connecticut was entered on September 23, 1957. Conn. R.40; infra, p. C-3.

Plaintiff's Motion to Alter and Amend Judgment under Rule 59 (a) was denied on October 23, 1957, Conn. R.44; infra, p. C-4.

The judgment of the District Court, Southern District of New York was entered on November 7, 1957. NYS R.2; infra, p. C-5.

The Court's order denying plaintiff's Motion for Supplemental Certification was entered on December 27, 1957. Infra, p. C-6; NYS R.47.

In each of the two cases the record on appeal and the appeal were docketed in the Court of Appeals for the Second Circuit on December 16, 1957; stayed Jan. 17, 1958 pending petition here.

The jurisdiction of this Court is invoked under 28 USC, section 1254 (1).

QUESTIONS PRESENTED

The two cases consolidated here present the question: may the man who loves and the lady he loves, be isolated from each other in the uncontrolled discretion of two state hospitals?

In other words, are orders which forbid communication with a patient, and forbid disclosure of any facts of record about the patient's case including record of the state's authority to detain the patient for an indeterminate period including lifetime,[2] properly within the discretion of a state hospital acting under a state statute?

Those civil liberties are here tested by six criteria, or issues. Each of the six issues are presented in each of two cases. The first case, Farnum v. Connecticut, concerns an order affecting the patient, who is the object of plaintiff's love and affection, before discharge from the supervision of a state hospital. The second case, Farnum v. New York State Department of Mental Hygiene, concerns an order affecting the plaintiff himself as a former patient, after his discharge from such supervision.

1. Constitutional Leadership in the Free World--The Ninth Amendment

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[2] For example, New York State Mental Hygiene Law, sec. 74 (7), infra, p. A-16; Conn. Gen. Stat., 1949, sec. 2653, infra, p. A-10.

Are the rights of the people under the Ninth Amendment to the United States Constitution, protected against state deprivation?

2. Civil Rights Act of 1957

Do federal courts have original jurisdiction over the subject matter of a state order violating civil liberties under the authority of a state statute?

3. Impairment of Jurisdiction of This Court

Does improper refusal by a single judge to appoint a three-judge court impair the appellate jurisdiction of the Supreme Court of the United States?

4. Medico-Legal

Is the privilege of confidential communication between patient and physician, for the benefit of the physician?

5. Human Rights Under the Declaration of Independence

What are the principles for adjudicating human freedom in accordance with the self-evident truths and God-endowed unalienable rights of each person under the Declaration of Independence?

6. Growth of Human Rights

What are the criteria of growth of the law of civil liberties coextensive with human progress?

CONSTITUTIONAL DOCUMENTS AND STATUTES INVOLVED

The Constitutional documents involved are the Ninth Amendment to the Constitution of the United States, and the Declaration of Independence.

The complaints are brought under USC, Title 28, section 1343, as amended by the Civil Rights Act of 1957, Part III, sec. 121; and under other statutes, as hereinafter more fully appears.

In Farmum v. New York State Dept. Mental Hygiene, plaintiff challenges the constitutionality of the state Mental Hygiene Law, including secs. 20 and 34 (9).

In Farmum v. Conn., plaintiff challenges the constitutionality of defendant's statutory authority, including Conn. Gen. Stat., 1949, secs. 2645, 2678, and 2679.

Those and other statutes are listed by title and citation in the Index.

STATEMENT

This petition consolidates two cases with related facts and issues. In each case the plaintiff, Henry Merritt Farnum, seeks injunctive and declaratory relief against the order of a state hospital based upon the authority of a state statute.

Farnum v. Connecticut.

In September, 1955 plaintiff advised the defendant hospital of his warm affection for Mrs. Dorothy Doe Roe, who is single, and is acknowledged by defendant to be a patient under the supervision of Fairfield State Hospital, Newtown, Connecticut.

William F. Green, M.D. is hospital Superintendent, and the hospital is supervised by the Connecticut State Board of Mental Health, Hartford, Conn.[3]

Plaintiff's love and affection for Mrs. Dorothy Roe extend from the time when each was a student, when they met, dated and corresponded at

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[3] Public Act No. 652, State of Connecticut, Jan. Session, 1957, "An Act Creating the State Board of Mental Health"; infra, p. A-6. As to Board of Trustees, Fairfield State Hospital, see 1955 Supplement to the General Statutes, Vol. I, sec. 1532 (d), (1953), infra, p. A-12.

Yale Law School where plaintiff then studied.

Plaintiff advised the defendant that his warm affection extends to the three sons of Mrs. Roe, ages 6 to 11, in the spirit of his regard for their mother.

Notwithstanding that knowledge, defendant by orders continuing in effect since September, 1955 barred the plaintiff by all means at defendant's disposal, in plaintiff's efforts to reach Mrs. Dorothy Roe. By defendant's orders (1) all visits by plaintiff to Mrs. Roe while at the hospital have been forbidden; (2) all communications to her while at the hospital have been obstructed; and (3) all information to plaintiff of any nature, although desired by plaintiff to assist in his actions on behalf of Mrs. Dorothy Roe, has been withheld by the hospital, including information as to the dates when she is absent from the hospital, or home on leave. Defendant bases their order upon the authority of Connecticut statutes.[4]

The result for 27 months, from September 1955 to date, has been completely to isolate the plaintiff and Mrs. Dorothy Roe from each other while she is confined to the hospital, and generally to isolate her from him when, as now, she is absent from the hospital on leave.

In Mrs. Dorothy Roe's latest leave of absence from the hospital, plaintiff for the first

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[4] Conn. R. 3 to 8, citing Conn. Gen. Statutes, 1949, sections 2645, 2678, 2679; infra, pp. A-8 and A-11.

time located and met her, at the home of her mother in Old Greenwich, Connecticut on November 30, 1957.

Mrs. Dorothy Roe confirmed to plaintiff in that meeting that the orders of the state are not at her request. She welcomes plaintiff's letters. She is not discharged from the hospital. She is subject to reconfinement at their discretion, for an indeterminate period of time including lifetime, upon each of her regular visits to the hospital.[5] Her status now is similar to her several previous absences from the hospital. Under section 2653 she may not be discharged until the Fall of 1958, even assuming that she avoids recommitment during that period.

The case therefore presents facts at a critical moment. Defendant's orders continue in force. Under those orders, and in defendant's discretion at any moment, Mrs. Roe's isolation of 27 months may be continued indefinitely, either directly by hospitalization, or indirectly by the relatives of Mrs. Roe acting on advice of the hospital.

In the face of that dilemna Mrs. Dorothy Roe must build her hopes for the future. She cherishes the prospect of reunion with her children in a home of their own, in the pursuit of happiness in the love and personal qualities of mother and sons. The decision as to marriage is hers to make.

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[5] Conn. Gen. Statutes, 1949, sec. 2653; infra, p. A-10.

On August 27, 1957 the complaint was filed.[6] Plaintiff then applied for appointment of a three-judge court, and moved for an interlocutory injunction. Defendant moved to dismiss the complaint. All three motions were heard on September 23, 1957 at Hartford, Connecticut before Hon. J. Joseph Smith, Chief Judge, United States District Court for the District of Connecticut. Judge Smith ruled in favor of the defendant on all three motions.[7]

By opinion dated as of the day of hearing, and unreported, Judge Smith approved judgment on the merits. The judgment granted defendant's motion to dismiss on the grounds of lack of jurisdiction, incapacity of the plaintiff to sue, and improper relief sought; with costs to defendant.[8]

Plaintiff's Motion to Alter and Amend Judgment Under Federal Rule 59(a) was filed October 4, 1957 and requested findings of fact and conclusions of law on all issues on the merits including these: constitutionality of Connecticut statutes which defendant cites as authority for settled policies of the defendant; plaintiff's application for a three-judge court to decide such constitutional issues; and plaintiff's requested relief including an interlocutory injunction.

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[6] Civil No. 6879, United States District Court, Dist. of Connecticut; infra, p. B-1;R.22-25.

[7] Conn. R. 18-19. Infra, pp.C-1,2.

[8] Conn. R. 40. Infra, p. C-3.

Plaintiff's Motion requested that the judgment affirm without ambiguity that all of the rulings of the court are included in the judgment in this case.[9]

By Memorandum of Decision filed October 23, 1957, Judge Smith denied plaintiff's Motion to Alter and Amend on the ground that plaintiff has "...no authority to represent an inmate...."[10]

Yet plaintiff is the only person with the necessary information and interest to enforce such an action whenever Mrs. Dorothy Roe is again isolated by the continuing order of defendant, either while she is hospitalized, or on leave of absence.

On November 7, 1957, plaintiff filed Notice of Appeal to the Court of Appeals for the Second Circuit where the certified record was filed and the appeal docketed on December 16, 1957, case #24944.

Farnum v. New York State Dept. of Mental Hygiene

In the first case, Farnum v. Conn., defendant's order forbidding visits to Mrs. Dorothy Roe was issued in September, 1955.

As the result plaintiff sought in many ways to see or to contact Mrs. Dorothy Roe at some

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9 Conn. R. 41, 42.

10 Conn. R. 44; infra, p. C-4.

indefinite moment of her absence from the hospital on leave, or to contact her indirectly in the hospital.

Those attempts by plaintiff to locate or to contact Mrs. Roe were the occasion for plaintiff's detention for fourteen months by the New York State Department of Mental Hygiene.

In the second case, Farnum v. NYS Dept. Mental Hygiene, plaintiff urges the unconstitutionality of the state's order under authority of state statutes. That order withholds from the plaintiff his own hospital record, as "confidential" in the state's discretion.[11]

For the purpose of presenting a clear case for decision of that constitutional issue by this Court, plaintiff refrains from any allegations which defendant may cite as color for release "in their discretion" of the record now withheld, thus to circumvent the clear issue now presented in the second case.[12]

During plaintiff's fourteen months of detention from December 1955 to February 1957,

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[11] NYS R. 19; infra, p. B-12. Plaintiff's Exhibit II, not certified by the District Court to the record on appeal, is relevant.

For state statutory control of state hospitals, see Mental Hygiene Law, secs. 4 and 11; infra, p. A-13.

[12] Complaint, paragraphs 5 (c) and (d), NYS R. 2-3; infra, p. B-11.

plaintiff attempted without success to communicate with Mrs. Dorothy Roe by letters and small gifts. In February 1957, plaintiff was released under "convalescent care", and discharged on July 25, 1957.

In February, 1957 plaintiff resumed his attempts to visit Mrs. Roe, and to obtain information about her both directly through the hospital, and also indirectly.

Thus the consolidation of the two cases by this petition is based upon the facts common to both, presenting related issues of secrecy and concealment of facts of record.

In Farnum v. New York State, etc., that record comprises the entire hospital record of plaintiff's detention for an indeterminate period, including lifetime, presumably upon allegations of mental illness.

On July 29 and August 8, 1957, plaintiff requested that record from the defendant. In reply the defendant represented that the entire record is "confidential", and ordered that plaintiff's request be denied. No part of the record has been received in response to plaintiff's request. Plaintiff cites the New York state Mental Hygiene Law as authority.[13]

On August 19, 1957 the complaint was filed, followed by plaintiff's application for

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[13] NYS R. 19. Vol. 34A, Mental Hygiene Law, sections 20 and 34 (9); infra, pp. A-13 to A-15.

appointment of a three-judge court.[14] Defendant moved to dismiss the complaint. On those motions, plaintiff submitted document #1, Plaintiff's Exhibits; and #2, Memorandum of Law. Defendant then submitted #3, a Memorandum of Law. Plaintiff followed with document #4, Reply Memorandum of Law.

On November 7, 1957, Judge Ryan granted defendant's motion to dismiss, without costs, on the ground that plaintiff has not exhausted his "state administrative or judicial remedies", and that the state statute and order "does not operate to deprive either plaintiff or anyone else of constitutionally protected rights...."[15]

The District Court certified only document #4, and has denied plaintiff's motion for certification of the other three documents.[16]

On November 21, 1957, plaintiff filed Notice of Appeal to the Court of Appeals for the Second Circuit where the record, insofar as certified, was filed and the appeal docketed on December 16, 1957, case 24945. The Supplemental Record on Appeal is being docketed.

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[14] Civil No. 123-315, United States Dist. Court for the Southern District of New York. NYS R. 1-3; infra, pp. B-9 to B-12; and B-13.

[15] NYS R. 23; infra, p. C-5.

[16] For a full analysis of this issue, including the disposition of document #3, see infra, pp. 25 to 28.

REASONS FOR GRANTING THE WRIT

Early decision by this Court of the issues here presented is urgently needed as a bulwark of human rights, in the free world that looks to America for constitutional leadership.

The bulwark will be strengthened by each of six criteria for civil liberties.

The early decision is urgently needed by the parties, to prevent irreparable loss.[17]

1. Constitutional Leadership in the Free World--the Ninth Amendment.

Did the framers intend to protect against state violation, the unenumerated rights "...retained by the people..." under the Ninth Amendment?

That vital issue is undecided directly by this Court, as far as plaintiff is aware.

Plaintiff"s affirmative position is the logical outgrowth of the following principles.

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[17] For such risk as to Mrs. Dorothy Doe Roe, see supra, p. 10.

Plaintiff's pursuit of domestic happiness is directly at stake, and his career towards its fulfillment.

In similar cases involving state statutes, without citing the Ninth Amendment, this Court has decided similar issues on the merits and has found state statutes unconstitutional. Therefore specific, unenumerated human rights are among those reserved to the people, and defended against deprivation by state legislatures which exceed state legislative power.[18]

In similar cases involving state statutes, and specifically citing the Ninth Amendment, other federal and state courts recognize the principle of unenumerated human rights by deciding such issues on the merits.[19]

This Court, without exception since 1895, confines its federal restriction to amendments I to VIII, comprising enumerated rights.[20]

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[18] For example Thompson et al. v. Consolidated Gas Utilities Corp., 300 U.S. 55, 81 L.Ed. 510, 57 S.Ct. 364, 1937; Parkersburg v. Brown, 106 U.S. 487, 27 L.Ed. 238, 1 S.Ct. 442, 1882; Gunn v. Berry, 82 U.S. 610, 21 L.Ed. 212, 1872; and cases cited.

[19] For example Clay v. City of Eustis, 7 F 2d 141 (D.C., S.Dist.Fla.), 1925; State v. Michel, 121 La. 374, 46 So. 430, 1908.

[20] For example Palko v. Connecticut, 302 U.S. 319, 82 L.Ed. 288, 58 S.Ct. 149, 1937; Ohio ex rel. Lloyd v. Dollison, 194 U.S. 445, 447, 48 L.Ed. 1062, 24 S.Ct. 703, 1904; Bolln v. Nebraska, 176 U.S. 83, 44 L.Ed. 382, 384, 20 S.Ct. 287, 1899; Holden v. Hardy, (Continued next page)

Plaintiff petitions for hearing by this Court of the review of Constitutional history, to establish that the Ninth Amendment protects such unenumerated civil liberties against state deprivation.[21]

2. Civil Rights Act of 1957.

Jurisdiction of federal courts to adjudicate the question here presented, is in issue on four grounds each invoking statutory authority amended by the Civil Rights Act of 1957.[22]

The jurisdictional issues are:

a. jurisdiction of the subject matter;

b. availability of injunctive and declaratory relief;

c. necessity to exhaust state administrative and legal remedies; and

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20 (Continued) 169 U.S. 366, 42 L.Ed. 780, 18 S.Ct. 383, 1897; and Brown v. Walker, 161 U.S. 591, 40 L.Ed. 819, 824, 16 S.Ct. 644, 1895.

21 Guidelines for such a review are established by Bennett B. Patterson in The Forgotten Ninth Amendment. Indianapolis: Bobbs-Merrill Company, 1955. 217 pp.

22 85th Congress, Public Law 85-315, 71 Stat. 637, Part III, sec. 121. September 9, 1957; infra, p. A-2.

d. In Farnum v. Conn., standing of a person to litigate, whose relationship is that of love and affection.

Plaintiff pleads the utmost urgency in the need for decision by this Court, to protect the Civil Rights Act against impairment by the District Court decisions here reviewed.

The issues undercut the sole section of the Civil Rights Act of 1957 providing for access to the courts by individual complainants in their own behalf, on issues of civil liberties.[23]

Impairment of such relief is particularly acute for it is the sole surviving section of Part III after Congress rejected the Attorney-General's request for authority to litigate in behalf of individual claimants.

a. Jurisdiction of the subject matter.[24]

The complaints present as subject matter, issues of deprivation of freedom to

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[23] Access in actions to protect voting rights, is further provided in Part IV of the Act.

[24] For the complaints, see Conn. R. 22-25; infra, p. B-1; and NYS R. 1-3; infra, p. B-9.

For District Court rulings on this point, please note Conn. R. 19 and 40, infra, pp. C-1 and C-3; and NYS R. 23, infra, p. C-[illegible].

communicate, freedom to visit, right to receive unprivileged records and information, freedom of access to obtain waiver of privilege, freedom of access to facts controlling the pursuit of happiness, freedom in that pursuit, and other civil liberties comprising unenumerated rights protected by the federal Constitution.

b. Availability of injunctive and declaratory relief.[25]

The complaints request injunctive and declaratory relief, specifically within the Civil Rights Act of 1957, protecting plaintiff's right "...To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights...."[26]

Each complaint in its first paragraph establishes jurisdiction under Acts of Congress, including USC Title 28, sec. 1343, subd. 3, "To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal

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[25] For District Court rulings on this point, note particularly Conn. R. 40, 44, Infra, pp. C-1 to C-3; and NYS R. 23, Infra p. C-5.

[26] Infra, p. A-2.

rights of citizens..."[27]

Jurisdiction is further invoked under Title 42, secs.1983 and 1985.[28]

c. Exhaustion of state administrative and legal remedies.[29]

Plaintiff emphasizes the urgency that the original jurisdiction of district courts under the Civil Rights Act of 1957 be unimpaired by requirement of exhaustion of state legal and administrative remedies.

The serious need is to stabilize the original jurisdiction of federal courts in the protection of civil rights, by reaffirming that the sole requirement is a question "which by law brings the case within the jurisdiction of a Federal Court. The right of a party plaintiff to choose a Federal court where there is a choice cannot be properly denied...."[30]

That opinion was reemphasized by Justice Frankfurter's warning, in his concurring opinion

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[27] Infra, p. A-3.

[28] Infra, p. A-5.

[29] For District Court ruling on this point, please note NYS R. 23, infra, pp C-5,6

[30] Willcox v. Consolidated Gas Co., 212 U.S. 19, 40, 53 L.Ed. 382, 29 S.Ct. 192, 1909.

of Alabama Public Service Commission v. Southern Railway Co.[31]

A ruling for defendant on this issue increases the risk to original federal jurisdiction in civil rights cases, by nullifying the Congressional reaffirmation of such original jurisdiction after the intervening decision in the Alabama case.

d. Standing of a person to litigate, whose relationship is that of love and affection.[32]

In Farnum v. Conn., plaintiff acts in his own behalf. Plaintiff further claims standing to act as a person whose relationship to the patient is that of love and affection. If the latter issue is new to this Court, it is logically supported by the standing of a friend to act in behalf of the patient in nine legal capacities under Connecticut statutes.[33]

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[31] 341 U.S. 341, 349-350, 95 L.Ed. 1002, 71 S.Ct. 762, 1950.

[32] For District Court ruling on this point, please note Conn. R. 18-19, 40, and 44; infra, pp. C-1 to C-4.

[33] Infra, pp. A-8 to A-11.

Section 2654 of those statutes further protects the right of a person not even a friend of the patient, but merely "interested in his welfare", to apply for a writ of habeas corpus.

3. Impairment of Jurisdiction of this Court.[34]

Appellate jurisdiction of this Court over the issues of the instant cases, depends upon USC Title 28, sec. 1253, "Direct Appeals from Decisions of Three-Judge Courts".[35]

Plaintiff's necessity to resort to this petition results from denial by the District Court in each case, of plaintiff's application for appointment of a three-judge court.

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[34] This Court may issue a writ of mandamus. Metropolitan Water Company of West Virginia, 220 U.S. 539, 55 L.Ed. 575, 31 S.Ct. 600, 1911.

In Farnum v. Conn., please note oral analysis, Conn. R. 15, infra p. B-6; and also plaintiff's Application for Three-judge Court, Conn. R. 31.

In Farnum v. New York State, etc., please note plaintiff's Application for Three-Judge Court, NYS R. 13-14, infra, p. B-13.

On irreparability, please see this petition, supra, pp. 10 and 16.

[35] Infra, p. A-4.

Plaintiff respectfully contends that the denials of his applications are in error, for the complaint in each case presents issues of federal unconstitutionality of state orders under authority of a state statute, with issues of irreparable injury properly for decision by a three-judge court under USC Title 28, secs. 2281 and 2284.[36]

Therefore only this Court has power to remedy the impairment of its appellate jurisdiction by District Court denial of plaintiff's applications for appointment of a three-judge court.

4. Medico-Legal.

Such issues presented by this petition include communications based upon love and affection, and secrecy of records.

a. Communications.

In Farnum v. Conn., the patient's right of communication is one-way only; from the patient, not to him. The patient has no right to receive visitors. Even a visit by an attorney is in the state's discretion.[37]

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[36] Sec. 2281, infra, p. A-4.

[37] Conn. Gen. Statutes, 1949, sections 2678 and 2679; infra, p. A-11.
Conn. Departmental Regulation 119-2-12, infra, p. A-12.

b. Secrecy of records.

In both cases, the defendant hospital claims the discretionary right to withhold from the plaintiff the facts of record.

By analogy, and for purposes of illustration, consider the effect of similar withholding by court order of documents comprising court records.

In a motion to dismiss the complaint on the merits, the issues are legal issues because the facts are assumed as pleaded.[38]

In the instant cases, those issues were matters of record. Plaintiff's Notices requested the certification of each document, specified by title. Such notice is a mere formality under Rule 11(a) of the Court of Appeals for the Second Circuit.[39]

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[38] The risk created in the instant cases by the District Court's claim of discretion to withhold exhibits and memoranda of law, is particularly acute in view of the similar principle advanced by another court, that there is no mandatory duty upon a court even to receive legal memoranda or evidence in a hearing upon motion to dismiss a complaint. United States v. Fujimoto et al., 102 F. Supp. 890 (Dist. Hawaii), 1952.

[39] Plaintiff's Notice of Record on Appeal, Conn. R 48-49, NYS R. 36-37. Plaintiff's Notice of Supplemental Record on Appeal, NYS R. 48.

(Continued next page)

In the New York case, certification of important documents was refused despite that Notice and Rule. On plaintiff's Motion denied, the District Court claimed and exercised discretion to withhold those matters of record on appeal.[40]

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[39] (Footnote Continued)

In Farnum v. New York State, etc., documents included:

#1 Plaintiff's Exhibits
#2 Plaintiff's Memorandum of Law
#3 Defendant's Memorandum of Law
#4 Plaintiff Reply Memorandum of Law
#5 Defendant's Exhibits
#6 Plaintiff's certified letter to the Clerk December 26, 1957.

In Farnum v. Conn., documents included:

#1 Plaintiff's Memorandum of Law
#2 Defendant's references, solely in context, to defendant's Memorandum of Law, Conn. R. 2, 12. However defendant now states that there is no such document.

Legal memos appended to this petition and cited on this issue, are for identification only, and are not submitted as supporting briefs under Rules 23 (h) and 23 (j)(3) of this Court. Therefore the citations in those memos are not indexed.

[40] Plaintiff's Motion for Supplemental Certification, infra, pp.B-18 to 20;denied, infra, p. C-6; NYS R. 39-40, and 47.

In both cases, a portion only of the legal memoranda were certified, and the balance withheld. In the New York case, the Exhibits of one party were certified, and those of the other party withheld.[41]

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[41] "Discretion" asserts a right to exclude matters of record.

In NYS, documents #1 and #2 are withheld by court order, and are not certified on appeal; supra, footnote 40.

In NYS, document #6 also is withheld.

In Conn., document #2 was not in the court file, and inasmuch as it cannot be found, it is not certified. Conn. R. 43.

"Discretion" also asserts a right to include matters of record.

In NYS, only documents #3, #4 and #5 are certified, NYS R. 41-45, 24-30, and 10-12; infra, pp. B-14 to B-17. Please note that certification of document #3 is contrary to the Court's ruling, NYS 41-45, and 47; infra, p. C-6.

In Conn., only document #1 is certified. Conn. R. 38-39; infra, pp. B-7 to B-8.

The Court's claim of discretion to withhold those matters of record on appeal, deprives plaintiff of his right under the Ninth Amendment that a case shall disclose its issues.[42]

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[42] Events here show the eight results when withholding of a record is discretionary.

1. Some records remain invisible and unofficial, e.g. NYS document #6 and Conn. document #2.

2. Some court records disappear, e.g NYS document #3.

   (See para. B, referring to "2", "Defendant's Memorandum of Law", Motion, NYS R. 39-40; infra, pp.B-18,19)

3. A letter delivered by certified mail and relevant to that disappearance, is withheld.

   (NYS document #6, plaintiff's certified letter to the Clerk, U.S. Dist. Court, So. Dist. N.Y., Dec. 26, 1957)

4. Some documents are completely withheld by the Court on Motion denied, e.g. NYS documents #1 and #2. (Supra, footnote 40)

5. NYS document #3, thus withheld by the Court on Motion denied, nevertheless is certified on appeal, NYS R. 41-45.

6. Those records not withheld are out of context, e.g. NYS documents #4 and #5.

(Continued next page)

c. Summary.

This Court is here in the same position relative to the uncertified court records, as is the plaintiff relative to the hospital records; the issues thereby presented are matters of sheer conjecture.

Plaintiff contends that each action thus preventing communication, each withholding of the hospital record, and each failure to certify the court record, constitutes deprivation of rights reserved to the people by the Ninth Amendment to the federal Constitution.

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[42] (Footnote Continued)

(NYS document #4 cites and depends for its meaning upon documents #1 and #2, not certified; NYS R. 24-29, infra, pp. B-14 to 17.

NYS document #5 comprising defendant's Exhibits I to III, relate to plaintiff's Exhibit II not certified; NYS R. 10-12.)

7. For those six reasons, no clear record exists by which to judge any presumption of validity as to the decisions of a District Court.

8. For those seven reasons, the record of issues is incomplete for contest upon appeal (from a three-judge court), or upon review (by mandamus or certiorari).

F. Human Rights Under the Declaration of Independence

The Declaration of Independence is an important documentary source of unenumerated rights reserved to the people by the Ninth Amendment.[43]

This Court recognizes the Declaration as a source of human rights to be construed on its merits, separately from the enumerated rights of the Constitution.[44]

Plaintiff proposes that such meaning of the Declaration of Independence is clarified by the Ninth Amendment to the Constitution. The clarification will extend to many issues presented by this petition, including freedom to communicate, freedom to visit a loved one, right to receive unprivileged records and information, freedom of access to obtain waiver of confidential privilege, freedom of access to facts controlling the pursuit of happiness, freedom in that pursuit, standing to act for

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[43] Infra, p. A-1.

[44] Butchers' Union Company v. Crescent City Company, 111 U.S. 746, 762, 28 L.Ed. 585, 4 S.Ct. 652, 1884.

another in the relationship of love and affection, and right that a court record shall include the written record of legal issues.

Citing the Declaration of Independence the Supreme Court states, "The right to follow any of the common occupations of life is an unalienable right. It was formulated as such under the phrase 'pursuit of happiness' in the Declaration of Independence, which commenced with the fundamental proposition that 'all men are created equal, that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty and the pursuit of happiness'. This right is a large ingredient in the civil liberty of the citizen...." (Italics in original)[45]

Again, on page 764, the Court says, "I hold that the liberty of pursuit--the right to follow any of the ordinary callings of life...is one of the privileges of a citizen of the United States...."

After thus evaluating the unenumerated rights, the Court then turned to an independent evaluation of the right to "liberty", enumerated in the Fourteenth Amendment. (Page 475) "...But if it does not abridge the privileges and immunities of a citizen of the United States to prohibit him from pursuing his chosen calling, ...it certainly does deprive him (to a certain extent) of his liberty...."

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[45] Butcher's Union Company v. Crescent City Company, 111 U.S. 746, 762.

In a state constitution, the pursuit of happiness is even extended beyond love, the family and the home, to include pleasure. "...The framers of the Constitution of this state had gotten away from the dour notion that mundane happiness is sinful; and the first section of the state Bill of Rights reads: 'All men are possessed of equal and inalienable natural rights, among which are life, liberty, and the pursuit of happiness....' The court interprets that condition to mental and moral health which is called happiness to include pleasure...."[46]

The role of human communication is cited in another court, "...communication...the vehicle of human understanding...."[47]

6. Growth of Human Rights.

A United States Constitution that protects the unenumerated civil liberties of each person, emerges as the tool envisaged by John Adams[48] in 1765:

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[46] Smith v. Steineauf, 140 Kan. 407, 36 P 2d 995, 1934.

[47] United States v. Painters Local Union No. 481 et al., 79 F. Supp. 516 (D.Conn.), 1948.

[48] Quoted in Foreword, Rossiter, Clinton, Seedtime of the Republic, N.Y.: Harcourt, Brace and Company, 1953. 558 pp.

"I always consider the settlement of America with reverence and wonder, as the opening of a grand scheme and design in Providence for the illumination and emancipation of the slavish part of mankind all over the earth."

The foregoing issues numbered 1 to 5 are practical criteria for this, the 6th issue: principles to control the growth of human rights.

Constitutional leadership in the free world represents a challenge greater than competition in science. A billion open-minded fellow-men, mostly of non-white races, measure the toll of Russia's war potential in contrast to our civil liberties as truly practiced. Nine children in Little Rock hold armies at bay.

New human rights. In the understanding by this Court of our Constitutional birthright, is the answer.

Progress in human rights will evolve in the people's new insight into God's endowment of unalienable rights: individual free will, family pursuit of happiness, and truth in love that no boundaries can imprison.

That new insight creates the free world's constant growth in ethics, international declarations of human rights, communications, science, civil rights legislation and commissions, and insight into Constitutional history.

Criteria. Particularly by use of the Ninth Amendment, man's new awareness of his individual dignity and destiny will be tested by such issues as judicial construction of civil rights statutes, jurisdiction, access to facts of record, legalities of each specialized pursuit, and the evolution of unalienable human rights endowed in the name of America's Declaration of Independence.

Agenda. Plaintiff proposes that those issues, which are the issues of this petition, in truth present the agenda of the growth of civil liberties.

CONCLUSION

For the foregoing reasons, this petition should be granted.

Respectfully submitted,

Henry Merritt Farnum

Henry Merritt Farnum,
Petitioner

70 W. 46th Street,
New York 36, New York

January 18, 1958

APPENDIX A: CONSTITUTIONAL DOCUMENTS AND STATUTES

CONSTITUTIONAL DOCUMENTS

CONSTITUTION OF THE UNITED STATES

AMENDMENT IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

DECLARATION OF INDEPENDENCE

(Continental Congress. July 4, 1776)

When in the course of human events it becomes necessary for one people to dissolve the political bonds which have connected them with another, and to assume among the powers of the earth the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident; that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness; that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying it's foundation on such principles, and organizing it's powers in such form as to them shall seem most likely to effect their safety and happiness....

STATUTES--UNITED STATES CODE

CIVIL RIGHTS ACT OF 1957

(85th Congress, 1st Session, Public Law 85-315;
September 9, 1957, 71 Stat. 637)

Part III--To Strengthen the Civil Rights Statutes, and for Other Purposes

Sec. 121. Section 1343 of title 28, United States Code, is amended as follows:

(a) Amend the catch line of said section to read, "Sec. 1343. Civil rights and elective franchise"

(b) Delete the period at the end of paragraph (3) and insert in lieu thereof a semicolon.

(c) Add a paragraph as follows:

"(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote."

....

TITLE 28, SECTION 1343

(As amended by the Civil Rights Act of 1957)

Sec. 1343. Civil Rights and elective franchise.

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

TITLE 28, SECTION 1253

Sec. 1253. Direct appeals from decisions of three-judge courts.

Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges.

TITLE 28, SECTION 2281

Sec. 2281. Injunction against enforcement of state statute: three-judge court required.

An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such state in the enforcement or execution of such statute or of an order made by an administrative board or commission acting under State statutes, shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of 3 judges under Section 2284 of this title.

TITLE 42, SECTION 1983

Sec. 1983. Civil action for deprivation of rights.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

TITLE 42, SECTION 1985

Sec. 1985. Conspiracy to interfere with civil rights--Preventing officer from performing duties.

...

(3) Depriving persons of rights or privileges.

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the

laws; ...in any case of conspiracy set forth in this section, ...the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

STATUTES--CONNECTICUT

AN ACT CREATING THE STATE BOARD OF MENTAL HEALTH

(Public Act No. 652, State of Connecticut, January Session, 1957)

....

Section 2....There is established a department of mental health and a board of mental health of seven members, three of whom shall be physicians licensed to practice medicine in this state who have had experience in the field of psychiatry and all of whom shall serve without compensation.... The commissioner of mental health shall be an ex-officio member of the board of mental health without vote and shall attend its meetings. All actions of the department of mental health shall be taken by the commissioner or under his direction by such agents or subordinate officers as he may designate. The governor shall appoint the members to serve on the board for terms of four years each, ...None of the governor's appointees to the board shall be employed by the state or be a member of the staff of any institution wherein their compensation is paid wholly by the state.

Section 3....The board shall be responsible for developing and maintaining programs and policies concerning care and treatment of the mentally ill

and the administration of the department....

Section 4. The executive head of the department of mental health shall be a commissioner of mental health, appointed by the governor, after consultation with the board....He shall be a "department head" within the meaning of sections 27d to 30d, inclusive....The commissioner shall direct, coordinate and control the operations of the department.

Section 5. Subject to the approval of the board of mental health, the commissioner shall be responsible for the overall supervision and direction of all hospitals, institutions and facilities of the department of mental health and for developing and maintaining programs and policies concerning the care and treatment of the mentally ill. He shall establish regulations for the administrative practices and therapeutic methods in said hospitals, institutions and facilities in accordance with recognized standards of health....

Section 6. The Connecticut State Hospital, The Norwich State Hospital, The Fairfield State Hospital, The Connecticut Child Study and Treatment Home and Undercliff Hospital and the boards of trustees thereof shall be a part of the department of mental health and shall, for the purposes of chapter 11, constitute one budgeted agency whose executive head shall be the commissioner of mental health....

Section 7. The commissioner of mental health, with the approval of the board of mental health, shall appoint the superintendents of...the Fairfield State Hospital....A superintendent shall be removable by the commissioner with the approval

of a majority of the members of the board of mental health. Subject to the overall supervision and direction of the commissioner, each superintendent shall be in charge of his hospital ....

Connecticut General Statutes, 1949
Vol. I, Title 19
CHAPTER 119. MENTALLY ILL PERSONS

Section 2645. Proceedings upon complaint. Restraint pending proceedings. Necessary evidence.

Upon such complaint being filed in the probate court, such court shall assign a time, not later than ten days thereafter, and a place, for hearing such complaint, and shall cause reasonable notice thereof to be given to the person alleged to be mentally ill and to such relative or relatives and friends as it may deem advisable. Such court may also issue a warrant for the apprehension and bringing before it of the person complained of, and shall see and examine such person, if in its judgment his condition or conduct shall render it necessary or advisable so to do, or state in its final order why it was not necessary or advisable so to do. If such court shall be satisfied that such person is a dangerous person to be at large, it may make such order for his restraint and custody while the proceedings are pending as it may deem advisable; but such person shall not be prevented from having all reasonable opportunities to consult counsel and friends and to prepare and make his defense to such application. In addition to such oral testimony as may be offered at such hearing, the

court shall require the sworn certificates of at least two reputable physicians selected by the court, whom it shall find to be graduates of legally organized mental institutions and to have been practitioners of medicine at least three years within this state, and not connected with any hospital for mental illness, nor related by blood or marriage to the complainant, nor to the person alleged to be mentally ill, to the effect that they have mentally examined such person within ten days of such hearing and that in their opinion such person is mentally ill and a fit subject for confinement in a hospital for mental illness. If, on such hearing, the court shall find that the person complained of is mentally ill and a fit subject for treatment in a hospital for mental illness or that he ought to be confined, it shall make an order for his commitment to a hospital for mental illness to be named in such order, there to be confined while such mental illness shall continue or until he shall be discharged in due course of law, and commanding some suitable person to convey him to such hospital for mental illness and deliver him, with a copy of such order and of such certificates, to the keeper thereof. In appointing a person to execute such order, the court shall give preference to a near relative or friend* of the mentally ill person, so far as it shall deem it practical and judicious. Such court may, after hearing, when it shall find it to be for the best interest of the person so committed, revoke such order of commitment.

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* Italics are supplied to the word "friend" in its nine legal capacities under Connecticut statutes cited herein, pp.A-8 to A-11.

Section 2653. Parole or temporary absence of mentally ill patients.

The superintendent or keeper of any institution used wholly or in part for the care of the mentally ill may, under such restrictions or agreements as he shall deem advisable, permit any inmate thereof temporarily to leave such institution, in charge of his guardian, relatives or friends, *or by himself, for a period of time not exceeding one year. The original order of commitment shall remain in force and effect until such patient shall be officially discharged by the authorities of such institution. Should it appear to be for the best interest of the public or for the interest and benefit of such patient, he may return or be returned by his guardian, relatives or friends*or he may be recalled by the authorities of such institution, at any time during said one year and prior to his official discharge....

Section 2654. Writ of habeas corpus.

Each mentally ill person confined in a hospital for mental illness in this state shall be entitled to the benefit of the writ of habeas corpus, and the question of mental illness shall be determined by the court or judge issuing such writ, and, if the court or judge before whom such case is brought shall decide that the person is mentally ill, such decision shall be no bar to the issuing of such writ a second time, if it shall be claimed that such person has been restored to reason. Such writ may be applied for by such mentally ill person or on his behalf by any relative, friend*or person interested in his welfare.

Section 2673. Appeal.

Any person aggrieved by an order, denial or decree of the court of probate under this chapter, including any relative or friend, on behalf of any person found to be mentally ill, shall have the right of appeal as in other cases. The court of probate, on an appeal, shall make all necessary orders of notice to the parties to the proceedings and to such other persons as it may deem advisable....

Section 2678. Visits to patients in hospitals for mental illness.

An attorney at law retained by or on behalf of any patient in any hospital for mental illness, or any medical practitioner designated by such patient or by any member of his family or by a relative or friend of such patient, shall be admitted to visit such patient at all reasonable hours, if, in the opinion of the keeper of such hospital, such visit would not be injurious to such patient or if a judge of the superior court shall first order in writing that such visit be allowed or if the approval of the commissioner of welfare shall be first secured.

Section 2679. Patient may communicate with friends in writing.

All persons detained as mentally ill shall at all times be furnished with materials for communicating under seal with any suitable person outside the hospital for mental illness, and such

communications shall be stamped and mailed daily. Should the patient desire it, all rational communications shall be written at his dictation and duly mailed to any relative or person named by the patient.

Connecticut Departmental Regulations

Regulation 119-2-12, published Connecticut Law Journal, Feb. 14, 1956.

Each institution shall comply with the provisions of Sections 2678 and 2679 of the General Statutes relating to visiting of patients in hospitals for mental illness and the opportunity of patients to communicate with suitable persons outside the hospital. On request of a patient, the hospital shall give him a copy of such sections, or a copy of the rules governing the hospital, such rules to contain a statement of the patient's right under such sections. Copies of such rules shall be fixed with the Department of Mental Health.

Connecticut 1955 Supplement to the General Statutes, Vol. I

Section 1532d (1953). There shall continue to be a board of trustees of twelve persons appointed by the governor for The Connecticut State Hospital, the Norwich State Hospital and the Fairfield State Hospital, respectively. The governor shall bienially appoint four trustees for each of said hospitals....

STATUTES--NEW YORK STATE

Consolidated Laws, Vol. 34A,
Chapter 27, "Mental Hygiene Law"

Section 4. Organization of department.

....The powers and duties of all divisions, bureaus, officers and employees of the department shall be exercised and performed subject to the supervision, direction and control of the commissioner.

Section 11. Control of state institutions within the department.

(1) The department of mental hygiene shall have the jurisdiction, supervision and control of the state hospitals, as now or hereafter established for the care and treatment of the mentally ill, but not including Matteswan nor Dannemora state hospitals....

Section 20. Record of patients and inmates.

The department of mental hygiene shall keep in its office, and accessible only to the commissioner, medical director and such other officers and subordinates of the department as the commissioner may designate, except by the consent of the commissioner or an order of a judge of a court of record, a record of each patient admitted to an institution within the department..., and

also the records, papers and reports of examination of others made by any division or bureau of the department....

Section 34. Powers and duties of director.

The director of each state institution in the department shall be its chief executive officer, and in his absence or sickness, the associate director, or an assistant director or other officer designated by the director shall perform the duties, exercise the powers, and be subject to the responsibilities of the director. Subject to the statutory powers and rules of the commissioner, or rules approved by him, the director shall have the supervision and management of the institution....Subject to such powers of the commissioner and such rules, he shall:

(1) Personally maintain an effective supervision and inspection of all parts of the institution and generally direct the care and treatment of the patients. To this end the director shall make or cause to be made an examination of the condition of each patient, within five days after his admission to the institution, and shall regularly visit all of the wards or apartments for patients at such times as the rules applying to the institution shall prescribe....

(9) Keep a record, in which he shall cause to be entered at the time of reception of any patient, his name, residence and occupation, and the date of such reception, by whom brought and by what authority and on whose petition certified or received, and an abstract of all

orders, warrants, requests, petitions, certificates and other papers accompanying such persons.

The director within three days after the reception of a patient, shall make, or cause to be made a descriptive record of such case. He shall also make or cause to be made entries from time to time of the mental state, bodily condition and medical treatment of such patient during the time such patient remains under his care, and in the event of discharge or death of such person, he shall state in such record the circumstances thereof, and make such other entries at such intervals of time and in such form as may be required by the commissioner. Such record shall be accessible only to the director and such officers and subordinates of the institution as he may designate and to the commissioner and his representatives, except on the consent of the commissioner or an order of a judge of a court of record....

(16) The director shall cause to be held at least two meetings of the medical staff each week, at which the condition of patients, especially those recently admitted, shall be considered, and matters of medical service generally shall be given attention. The director shall cause a complete clinical record to be made of each patient, to be kept in such form and to comprise such matters as the commissioner may direct.

(Detention indeterminate period, to lifetime):

Section 74. Admission on court certification.

....

(7) At any time prior to the expiration of sixty days from the date of the order made as provided by this section, the director...may, if he finds that such patient is in need of continued care and treatment, file in the office of the county clerk, a certificate setting forth his findings and the need for the continued care and treatment of such patient. Upon the filing of such certificate, the order theretofore made by the judge shall become a final order, and such patient shall thereafter remain in such institution...until his discharge in accordance with the provisions of this chapter.

APPENDIX B: EXTRACTS FROM TRANSCRIPTS OF RECORDS

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF CONNECTICUT

Civil Action, File Number 6879

COMPLAINT

Henry Merritt Farnum, Plaintiff	
v.	Filed August 27, 1957
State of Connecticut, Defendant	

1. This complaint arises under the Act as amended September 3, 1954, c. 1263, sec. 42, 68 Stat. 1241; USC, Title 28, section 1343; and under other statutes; as hereinafter more fully appears.

2. (a) Plaintiff, Henry Merritt Farnum, is a citizen of the state of New York, doing business at 168 Mason Street, Greenwich, Connecticut, and at 70 W. 46th Street, New York, N.Y.

(b) All rights, privileges, immunities, and relief claimed by plaintiff, he also claims on behalf of Mrs. Dorothy Doe Roe, well known to defendant from the facts here set forth; and on behalf of all other persons situated similarly

to plaintiff and to Mrs. Roe.

3. Defendant, the State of Connecticut, has the office of its Secretary of State at Hartford. The Connecticut State Board of Mental Health administers Fairfield State Hospital, Newtown, Connecticut, at which William F. Green, M.D., is Superintendent.

4. (a) Since 1941 plaintiff has been favorably disposed towards Miss Dorothy Doe, now Mrs. Dorothy Doe Roe, and he maintains high regard for her today.

(b) In addition to his friendship with and affection for Mrs. Dorothy Roe, now single, plaintiff also cherishes her children in the spirit of his regard for their mother, and he desires to express his sentiments to her children personally.

(c) Plaintiff's high regard since the winter of 1940-41 also extends to Mrs. Roe's mother Mrs. Edward F. Doe, to her late father Mr. Edward F. Doe, to her brothers Mr. Robert E. and Mr. Donald Doe, each of Old Greenwich, Connecticut, and also extends to several members of their families in friendships starting in 1941 or since.

5. (a) For 23 months since September 1955, and continuing now and into the foreseeable future, plaintiff's attempts to visit, communicate with, locate, or ascertain information about Mrs. Dorothy Roe, have been and are prevented by the defendant, despite the fact that Mrs. Roe has been and remains under defendant's care and supervision.

(b) On July 8, 1957 at Fairfield State Hospital the Clinical Director reaffirmed directly to plaintiff the defendant's previous orders effective since September 1955.

(c) The orders of defendant refused to all persons except a few relatives, the right to visit Mrs. Dorothy Roe; or to communicate with her; or to receive information through the hospital about her.

(d) On July 20, 1957, plaintiff confirmed defendant's orders by letter to the defendant.

6. Since September 1955, plaintiff has attempted unsuccessfully to communicate with Mrs. Dorothy Roe.

(a) In no instance has plaintiff's communication been permitted to reach Mrs. Dorothy Roe.

(b) As one result, plaintiff was prevented from sharing with Mrs. Dorothy Roe the loss of her father on October 13, 1955, and her attendance at his funeral.

(c) Plaintiff's attempted communications included numerous greeting cards, brief letters, and small gifts by mail, to at least six addresses, each with a request for direct delivery or for forwarding. Many of those undelivered communications were returned to plaintiff in a group in March, 1957.

(d) Mr. Robert E. Doe in his letter to plaintiff March 5, 1957, and Mrs. Edward F. Doe in her letter to plaintiff February 14, 1957, each establish that those orders by defendant

prevented communication by plaintiff with Mrs. Dorothy Roe.

(e) In connection with his efforts to locate or to communicate with Mrs. Dorothy Roe, plaintiff has been confined on two occasions by officials of mental hospitals in New York state, during the period from November 1955 to February 15, 1957.

7. (a) Since September 1955, plaintiff has attempted unsuccessfully to locate Mrs. Dorothy Roe at some indefinite moment of her absence from the hospital, and has been prevented by lack of information from the defendant.

(b) Since September 1955, plaintiff has attempted unsuccessfully to ascertain from defendant information concerning Mrs. Dorothy Roe as the basis for actions in her behalf.

8. (a) Each and all of those orders by defendant deprive the plaintiff, and also Mrs. Dorothy Roe, of...rights, privileges and immunities secured by the Constitution of the United States, and by Acts of Congress providing for equal rights of citizens.

(b) Plaintiff further complains of deprivation by those orders of such rights, privileges, and immunities under color of, or by the provisions of any federal or state law, statute, ordinance, regulation, custom or usage; either by representatives of the defendant only, or by their concerted agreement with other persons.

(c) The continuation of each and all of such orders by defendant, now and hereafter,

constitutes a continuing wrong to which plaintiff here records his continuing objection.

9. It is foreseeable that additional issues may result from rightful disclosure to plaintiff of the information now withheld by defendant, and plaintiff requests leave thus to amend at that time.

10. Especially as the result of lack of such information in hand, plaintiff moves for immediate allowance of the relief claimed.

Plaintiff prays for:

(1) Temporary and permanent injunctions against the orders by defendant set forth herein;

(2) A declaratory judgment determining the right of plaintiff to visit, communicate with, locate, and receive from defendant full information concerning, Mrs. Dorothy Roe;

(3) All other relief to which plaintiff may be entitled in his own right, and all relief on behalf of Mrs. Dorothy Roe, and on behalf of all other persons similarly situated.

(s) Henry Merritt Farnum

Plaintiff,
168 Mason Street,
Greenwich, Connecticut.

TRANSCRIPT OF HEARING ON

PLAINTIFF'S APPLICATION FOR APPOINTMENT OF

THREE-JUDGE COURT

September 23, 1957

Before Hon. J. Joseph Smith, U.S.D.J.

MR. FARNUM: ...I submit, then, that we have precisely the type of situation covered by sections 2284 and 2281 of Title 28, providing for determination by a three-Judge Court. The issues are set forth in I of the memorandum....They relate to many aspects of the constitutionality....

(Conn., R. 17)...it is plaintiff's position that a three-Judge Court should be appointed to determine the issue of the constitutionality of statutes under which these actions have taken place in respect to the issues that are here challenged by plaintiff....

PLAINTIFF'S MEMORANDUM OF LAW

(Note: petitioner recognizes and complies with Rule 23-j-3 of this Court, that his legal argument in petition under Rule 23-h shall be presented in a single petition, and not apportioned to a supporting brief. This document is appended solely for identification, not as a supporting brief under those Rules. Therefore its citations are not indexed. See supra, footnote 39)

Hon. J. Joseph Smith, U.S.D.J.
For hearing September 23, 1957

I. There are clear issues of federal constitutionality to be adjudicated.

A. As to plaintiff, in his own behalf....

2. Freedom in pursuit of happiness. (Amend. IX, Constitution; Conn. R. 20-21)

B. As to plaintiff, a friend and interested party, on behalf of Mrs. Dorothy Doe Roe

1. Law recognizes friend's right to act on behalf of patient

a. Visits by lawyer retained by or for a patient "by a relative or friend of such patient". (Conn. Gen. Stat. 1949, sec. 2678)

b. Writ of habeas corpus, "or on his behalf by any relative, friend, or person interested in his welfare" (Conn. Practice Manual, Form 432, "Habeas by a Friend")

....

II. The federal constitutional issues are within the jurisdiction of the United States District Court for the District of Connecticut.

A. If defendant's orders are authorized by a state statute, or by order of a board or commission, then three-judge court should be appointed.

1. Title 28, sec. 2284, USC, Procedure of Convening

2. Title 28, sec. 2281, USC, Injunction v. state statute or order of board or commission.

B. If defendant's orders are under color of state statute, custom or usage, this court has original jurisdiction.

1. Civil Rights Act of 1957, amending title 28, sec. 1343. (85th Congress, Public Law 85-315, September 9, 1957, 62 Stat. 932)

Right "...to recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights...." (Part III, sec. 121)

2.a. Liability for actions under color of law (Title 42, sec. 1983)

b. Liability for conspiracy (Title 42, sec. 1985)

...

Respectfully submitted,

(s) Henry Merritt Farnum
Plaintiff

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action, File Number 123-315

COMPLAINT

Henry Merritt Farnum, Plaintiff	
v.	Filed August 19, 1957
New York State Department of Mental Hygiene, Defendant	

1. This complaint arises under the Act as amended September 3, 1954, c. 1263, sec. 42, 68 Stat. 1241; USC, Title 28, section 1343; and other statutes; as hereinafter more fully appears.

2. (a) Plaintiff, Henry Merritt Farnum, resides at 70 W. 46th Street, New York 36, New York, and acts in his own behalf, and on behalf of all other persons similarly situated.

(b) Defendant, New York State Department of Mental Hygiene, is administered by Commissioner Paul H. Hoch, M.D., Gov. Alfred E. Smith Building, Albany, New York, and by the Director of Manhattan State Hospital, Paul H. Travis, M.D., Wards Island, New York 35, New York.

3. (a) For fourteen months, from December 1955 to February 15, 1957, plaintiff was confined in Manhattan State Hospital.

(b) Plaintiff was discharged from "convalescent care" July 25, 1957.

4. (a) After that discharge plaintiff requested the full opportunity to examine, and to receive a complete transcript of the records, files, and all other material related to his confinement, including such material subsequent thereto; referred to hereinafter as the record.

(b) Plaintiff requested to be included in that record the name of all descriptive and other titles, file headings, code numbers, and related information, by which reference is made to such material.

(c) Those requests were made by certified letters to the defendant. No part of the requested record was offered in reply to those requests.

5. (a) The orders by defendant to withhold from plaintiff the facts of record now secret, deprive the plaintiff of...rights, privileges and immunities secured by the Constitution of the United States, and by Acts of Congress providing for equal rights of citizens.

(b) Plaintiff further complains of deprivation by such orders of his rights, privileges and immunities under color of any state law, statute, ordinance, regulation, custom or usage; either by representatives of the

defendant only, or by their concerted agreement with other persons.

(c) One characteristic of a wrongful claim of discretionary power is power to grant, as well as power to deny a request, and plaintiff objects equally to both results, now and hereafter as a continuing wrongful claim, as to any or all of the record requested from defendant, in plaintiff's own behalf and on behalf of all other persons similarly situated.

(d) In order to enable a clear decision as to the unconditional right of plaintiff to receive the record from the defendant, this complaint refrains from citing at this time specific issues to which that record may be relevant.

6. It is foreseeable that additional issues may result from rightful disclosure to plaintiff of the record now withheld, and plaintiff requests leave thus to amend at that time.

7. Especially as the result of lack of such record in hand, plaintiff moves for immediate allowance of the relief claimed herein.

Plaintiff prays for:

(1)A permanent injunction against all orders by defendant withholding the requested record;

(2)A declaratory judgment on behalf of plaintiff and all other persons similarly situated, determining the unconstitutionality and illegality of such orders by defendant, therefore enjoined;

(3)All other relief to which plaintiff may be

entitled in his own right, and on behalf of all other persons similarly situated.

(s) Henry Merritt Farnum
Plaintiff

70 W. 46th Street,
New York 36, New York.

AFFIDAVIT

Harold Borgwald, Esq.,
Assistant Attorney General
of the State of New York

Farnum v. New York State Dept. of Mental Hygiene,
October 9, 1957, NYS R. 19

....

Deponent respectfully calls the attention of this Court to the fact that the said records, exclusive of the dates of commitment and discharge, are confidential communications, pursuant to the provisions of the Mental Hygiene Law....

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Farnum v. New York State, etc.

PLAINTIFF'S APPLICATION FOR THREE-JUDGE COURT

(Filed October 7, 1957)

1. The complaint in this case arises under USC Title 28, section 1343, as amended September 9, 1957 by the Civil Rights Act of 1957, 85th Congress, Public Law 85-315, 62 Stat. 932. Further statutory basis comprises USC Title 42, sections 1983 and 1985, and other statutes.

2. Plaintiff hereby applies for hearing by a three-judge court of plaintiff's claim for relief from defendant's orders pursuant to the Mental Hygiene Law of the State of New York, and for hearing of related issues. Plaintiff applies under USC Title 28, sections 2281 and 2284.

3. Plaintiff hereby requests preliminary hearing before such court on the earliest possible date, of plaintiff's request for an interlocutory injunction against all orders by defendant withholding from plaintiff the requested record described in paragraph 4 of the complaint.

4. Defendant's orders pursuant to the Mental Hygiene Law of the State of New York, declare the records requested by plaintiff to be confidential and privileged. Those orders raise clear issues of federal unconstitutionality, including violations of amendments...and IX of the Constitution of the United States....

PLAINTIFF'S REPLY MEMORANDUM OF LAW

(Note: this document is appended solely for identification, and not as a supporting brief under Rules 23-h and 23-j3 of this Court. Therefore its citations are not indexed. See supra, footnote 39, and p. B-7)

To Hon. Sylvester J. Ryan, U.S.D.J.

Farnum v. New York State Dept. Mental Hygiene

Outline of Plaintiff's Reply

POINT I.

THE COMPLAINT PRESENTS SUBSTANTIAL ISSUES OF CONSTITUTIONALITY.

A. First issue of law: any state statute which authorizes the defendant to withhold the facts of record now secret, is an unconstitutional statute.

....

POINT II.

THE COMPLAINT PRESENTS IMPORTANT ISSUES OF LAW RELATING TO THE CIVIL RIGHTS ACT OF 1957.

POINT III.

THE COMPLAINT PRESENTS IMPORTANT ISSUES OF FACT FOR DECISION BY A THREE-JUDGE COURT IN PLAINTIFF'S REQUEST FOR INJUNCTIVE RELIEF.

POINT I.

THE COMPLAINT PRESENTS SUBSTANTIAL ISSUES OF CONSTITUTIONALITY. Bell v. Hood et al., 327 U.S. 678, 681-3, 9 L. Ed. 939, 6 S.Ct. 773 (1946); Fay v. Douds, 2nd Cir., 172 F.2d 720 (1949)

A. First issue of law: any state statute which authorizes the defendant to withhold the facts of record now secret, is an unconstitutional statute.

1. That issue of law is presented clearly by paragraph 5(a) of the complaint:

"5. (a) The order by defendant to withhold from plaintiff the facts of record now secret, deprives the plaintiff of...rights, privileges and immunities secured by the Constitution of the United States, and by Acts of Congress providing for equal rights of citizens."

2. That issue of law is joined by defendant's affidavit of October 9, 1957, page 1:

"...said records, exclusive of the dates of commitment and discharge, are confidential communications, pursuant to the provisions of the Mental Hygiene Law...."

3. The Mental Hygiene Law of New York State, sections 20 and 34 (9) and (16), are in plaintiff's Memorandum, pp. 8 and 9.

4. Substantial issues of constitutionality are to be briefed and argued at trial. Cf. plaintiff's Memorandum....

I. A-5Therefore, contrary to defendant's contention, the complaint shows serious questions under federal and state law.

....

POINT II.

THE COMPLAINT PRESENTS IMPORTANT ISSUES OF LAW RELATING TO THE CIVIL RIGHTS ACT OF 1957.

A. Paragraph 1 of the complaint declares, "This complaint arises under...USC, Title 28, section 1343...."

B. Applicable provisions of that Act, including its section 4 enacted by the Civil Rights Act of 1957 during the pendency of this case, are set forth in plaintiff's Memorandum, pp. 6 and 7. That section modifies any principle that civil rights relief "sounds in tort".

C. "This case presents a unique opportunity to stabilize the original jurisdiction of federal courts in the protection of civil rights." Cf. plaintiff's Memorandum, I,A, pp. 5 to 7.

POINT III.

THE COMPLAINT PRESENTS IMPORTANT ISSUES OF FACT FOR DECISION BY A THREE-JUDGE COURT IN PLAINTIFF'S REQUEST FOR INJUNCTIVE RELIEF. Cf. "The Facts", plaintiff's Memorandum, pp. 2 and 3. Stratton v. St. Louis Southwestern Railway Co., 282 U.S. 10, 15, 51 S.Ct. 8, 75 L.Ed. 135 (1930); Ex Parte Northern Pacific Ry. Co., 280 U.S. 142, 144, 50 S.Ct. 70, 74 L.Ed. 233 (1929).

III....

B.Defendant's order results in important issues of fact relating to irreparable loss of civil rights by plaintiff.

1.That loss of civil rights is imminent, and plaintiff will be prejudiced irreparably by delay.

"The plaintiff is exposed to irreparable loss of civil rights by the order of defendant. Any and all such rights may be jeopardized by each eventuality in paragraphs 5 to 7 of 'Facts'...." Plaintiff's Memorandum, p. 16, II,A,3.

2.That loss of civil rights by plaintiff would be permanent and irreparable. Cf. "The Facts", plaintiff's Memorandum, pp. 2 and 3, paragraphs 5 to 7, and 10.

C.Therefore the irreparable loss of civil rights by plaintiff, as the result of defendant's unconstitutional withholding of the hospital record of facts, and defendant's opposition here to inquiry into the facts of that withholding, hides the truth behind a double screen which this court has authority to penetrate.

Plaintiff therefore prays that,

1. Defendant's motion to dismiss for lack of a substantial constitutional issue, be denied; and that
2. Plaintiff's motion for appointment of a three-judge court to decide the issues of law and fact as to irreparable loss of civil rights by plaintiff, and related issues, be granted....

PLAINTIFF'S MOTION
FOR SUPPLEMENTAL CERTIFICATION OF DOCUMENTS

for Record on Appeal to United States
Court of Appeals, 2d Circuit,
Under Its Rule 11(b)

(Filed December 23, 1957)

A. The following documents were specifically listed and designated by plaintiff's Notice of Record on Appeal, but were not certified by the Clerk of Court as requested by the plaintiff.

1. Plaintiff's Memorandum of Law;

2. Defendant's Memorandum of Law; and

3. Plaintiff's Exhibits in Support of Memorandum of Law.

Documents #'s 1 and 3, uncertified, are included in the file deposited with the Court of Appeals, and are marked "...to be returned to District Court". Thus availability of those documents on appeal is not assured, and their authenticity is not certified.

B. Document #2 was in the official file of the case on November 13, 1957, many days after the judgment was filed. At some intervening time before transmittal of the file to the Court of Appeals, document #2 was removed from the file without plaintiff's consent. As of this date it is neither in the District Court File Room, nor in the file transmitted to the Court of Appeals.

Inasmuch as the motions were submitted without oral argument, the record on appeal therefore is without any record, authenticated or otherwise, of the content and scope of defendant's legal argument which was before the judge for decision, which prevailed in the District Court, and which is contested upon appeal.

C. Plaintiff's duplicate copy of document #2 is attached to the original copy of this motion.

D. Plaintiff contends that the above three documents comprise "original papers in the file dealing with the action or proceeding in which the appeal is taken...." under Federal Rule 75 (o), and under Rule 11 (b) of the Court of Appeals for the Second Circuit.

By analogy and in support of plaintiff's contention, the Clerk of Court has carefully certified a similar document in this case, Plaintiff's Reply Memorandum of Law, pages 24 to 30 of the record.

E. Plaintiff further contends that those documents have an important relationship to the merits of the case, and are required to be certified to the above Court of Appeals under Federal Rule 75 (o), in the same manner that certification would be required of "...matter designated by the parties...." under Federal Rule 75 (g) in Courts of Appeals of circuits acting thereunder.

F. Plaintiff contends that Federal Rule 75 (o) is not intended to be more restrictive than Rule 75 (g).

G. Plaintiff contests the events described above as violating the Constitution of the United States....

H. Plaintiff therefore moves that a Supplemental Certification be issued by the District Court authenticating each of the above three documents and this Motion, each specifically by its title, and transmitting the same to the Court of Appeals for the Second Circuit as part of the record on appeal.

(s) Henry Merritt Farnum
Plaintiff

....

APPENDIX C: OPINIONS AND JUDGMENTS BELOW

RULING ON MOTIONS
Farnum v. Connecticut.

Plaintiff's Application for Appointment of a Three-Judge Court

Plaintiff's Motion for an Interlocutory Injunction

Defendant's Motion To Dismiss the Complaint

Transcript of Hearing on Motions at Hartford, Connecticut, On September 23, 1957, before Hon. J. Joseph Smith, USDJ (Conn. R. 18)

....

THE COURT: The Court will rule on the motion.

The complaint sets forth a claim which, so far as the Court knows, is unique. The complaint purports to be a class action, apparently brought in three capacities, one to redress the claimed deprivation of rights of plaintiff as an individual; second, to redress the deprivation of rights of the patient; and, third, others in the same situation as a class, a class claim to improve those situated similar to both the plaintiff and the patient.

However, it is not a proper class action, and so far as it purports to be for the benefit of the patient, the plaintiff does not set forth any relationship which would give him a standing to sue on behalf of the patient.

So far as his own claims are concerned, the right to visit one not a relative in a State institution is not a right which has heretofore

been considered a right guaranteed by the Civil Rights Act.

If the action could be considered as a type of complaint looking towards release of the plaintiff, not the plaintiff, but release of the patient by means of writ of hebeas corpus, of course, it would be defective for lack of allegation of exhaustion of State remedies or of facts which would make the commitment and present detention of the patient illegal.

The motion to dismiss the complaint is granted.

The motion for interlocutory judgment is denied, and the motion for a three-judge Court is denied.

Judgment may enter dismissing the action.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

Farnum v. Connecticut

JUDGMENT

(Filed September 25, 1957)

This cause came on to be heard on defendant's motion to dismiss on the grounds of lack of jurisdiction, incapacity of the plaintiff to sue, and that improper relief is sought, and the court having granted said motion,

It is hereby ORDERED, ADJUDGED and DECREED that this action be and it hereby is dismissed on the merits and that defendant recover its costs.

Dated at New Haven this 23rd day of September, 1957.

(s)Gilbert C. Earl,
Clerk

Approved as of September 23, 1957
(s) J. Joseph Smith
Chief Judge,
United States District Court

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

Farnum v. Connecticut

MEMORANDUM OF DECISION ON
MOTION TO ALTER AND AMEND JUDGMENT

(Filed October 23, 1957)

Since judgment was entered on motion to dismiss following denial of motion for appointment of three judge court, on the face of the pleadings, no findings of fact were made. Even if plaintiff's allegations of fact are accepted as true, this Court has no jurisdiction over the management of the State institution at the suit of one with no authority to represent an inmate.

The motion to alter and amend the judgment is denied.

Dated at Hartford, Connecticut, this 22nd day of October, 1957.

(s) J. Joseph Smith

United States District Judge

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Farnum
v.
New York State Department of Mental Hygiene

JUDGMENT

(Entered November 8, 1957)

Plaintiff, appearing in person, seeks a declaratory judgment adjudging unconstitutional and illegal certain orders of the defendant, an agency of the State of New York, and asks injunctive relief against the application of enforcement of these orders.

Plaintiff alleges that he was a patient at Manhattan State Hospital from December 1955 to February 15, 1957 and was thereafter discharged from convalescent care on July 25, 1957. Manhattan State Hospital is an institution for the care and treatment of the mentally disturbed. Plaintiff's claim is that he has been denied opportunity to examine or inspect the records of that institution concerning his treatment and custody and has been refused a copy of these records and that this is so because of orders of the defendant.

Plaintiff moves for a hearing by a three-judge court under Secs. 2281 and 2284, 28 USCA

Defendant moves to dismiss upon the ground that the complaint fails to state a claim for relief and that the Court lacks jurisdiction

of the subject matter and of the defendant.

Apparently it is plaintiff's contention that the provisions of Section 34 of the New York Mental Hygiene Law which provide that records of patients shall be accessible only to the Director of the Hospital and his designees and to the Commissioner and his representatives "except on the consent of the Commissioner or an order of a judge of a court of record," is unconstitutional. This section does not operate to deprive either the plaintiff or anyone else of constitutionally protected rights. There is no allegation that plaintiff has exhausted his available state administrative or judicial remedies.

The complaint is dismissed, but without costs. Let judgment be entered accordingly.

(s) Sylvester J. Ryan
USDJ

11/7/77

(Memo. Endorsed)

RULING ON MOTION
FOR SUPPLEMENTAL CERTIFICATION

Farnum v. New York State, etc., NYS R.47

This is accepted as a motion made by appellant under Rule 75 (h) F.R.C.P.

Plaintiff's and Defendant's memoranda of law submitted to the District Court, form no part of the record on appeal; however, in the

appeal prosecuted by appellant pro se the Court of Appeals may of its own motion require the submission of these briefs.

Motion denied, so ordered.

(s) Sylvester J. Ryan
U.S.D.J.

December 27, 1957

(Ruling Endorsed)

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IN THE

SUPREME COURT OF THE UNITED STATES

1957-1958 Term

Henry Merritt Farnum,
Petitioner
v.
State of Connecticut
and
State of New York,
Appellees

MOTION TO CONSOLIDATE AND

TO ASSIGN FOR HEARING,

PETITION FOR WRIT OF MANDAMUS, and

BRIEF IN SUPPORT THEREOF.

Henry Merritt Farnum,
Petitioner

70 W. 46th Street,
New York 36, New York

IN THE

SUPREME COURT OF THE UNITED STATES

Henry Merritt Farnum, Petitioner	*	
v.	*	No. Misc.
State of Connecticut, and	*	
State of New York, Appellees	*	

MOTION TO CONSOLIDATE AND TO ASSIGN FOR HEARING

1. On January 30, 1958, plaintiff filed in this Court by mail his Motion To Docket the above-entitled action. That motion by its terms was directed to two petitions, one for mandamus, and the other for certiorari under Rule 23 (5) of this Court, each consolidating the two cases above. This Court has not ruled on that motion, and the Clerk has not docketed the action.

2. By letter of February 4, 1958, the Clerk of this Court declined to docket that action without a motion by plaintiff which would have admitted that such docketing is discretionary under the Constitution of the United States.

3. Plaintiff's letter of February 17, 1958 advised

that he would file his brief on that issue, annexed hereto as Exhibit S-I.

4. The footnote on page 2 of that Petition for Certiorari refers to the above proceeding as having issues in common with the case moved for consolidation therewith by this motion, Farnum v. International Association of Machinists, D.C.N.Y., S.D., Civil No. 129-88, complaint filed January 21, 1958 and dismissed by judgment of that Court filed March 17th.

   Plaintiff's Petition For A Writ of Mandamus in that case is annexed and hereby designated as Exhibit S-III.

5. The original Petition For Mandamus presents issues in common with those of the instant case: four issues as to relief under the Civil Rights Act of 1957, and five issues as to the growth of human rights under the Ninth Amendment of the Constitution of the United States. Please note "Questions Presented", p. 7 (IAM); and cross-indexing to the original Petition, for example on pages 19, 21-24, 26-27, and 31-32 of the I.A.M. Petition.

Plaintiff therefore moves as follows.

A. That Farnum v. International Association of Machinists be consolidated with the above-entitled cases.

B. That all issues of all cases thus consolidated, be argued at substantially the same time, under Rule 43 (5) of this Court.

C. That Petitions and cases thus consolidated be

limited to a single docketing fee and a single fee upon argument under Rule 52 (a) of this Court, such single fee including all relief, such as relief by mandamus and relief by certiorari.

D. Under Rule 43 (4) of this Court, that such argument be calendared two weeks after the period for filing of briefs by opposing counsel, in view of the importance of the issues and the previous delay in docketing.

Respectfully,

Henry Merritt Farnum,
Petitioner

70 W. 46th Street,
New York 36, New York.

April 5, 1958

Ernest H. Halstedt, Esq.,
Assistant Attorney General,
State of Connecticut,
Hartford, Connecticut.

Harold Borgwald, Esq.,
Assistant Attorney General,
State of New York,
80 Centre Street, New York, N.Y.

Stephen C. Vladeck, Esq.,
Vladeck and Elias,
147 W. 42nd Street, New York 36, N.Y.
Attorney for International Association
of Machinists.

MEMORANDUM OF LAW

IN SUPPORT OF MOTION

I. The highest achievement of a charter of liberties, is justice--the way to decide truth, in an issue of human rights. Such is the name and the law of the Great Charter.[1]

A. The individual's right to that justice is the first principle of peace, where truth makes might.[2]

---

[1] In 1215 A.D., the "...people...resolved to oblige the King to grant them their liberties, and to promise the same should be observed, which King John did in Running-mead...by...Charta Libertatum, the Charter of Liberties (the form of which you may read in Math. Paris, fol. 246, and is in effect the same with this here recited)..."

Henry Care, English Liberties Or The Free-Born Subject's Inheritance. Providence, R.I.: John Carter, printer, 1774, 6th Ed., p. 8.

[2] "We will sell to no man, we will not deny or defer to any man, either justice or right." From Chapter XXIX, Magna Charta; Care, Providence, R.I., op. cit., p. 21; reprinted infra, Exhibit S-II, p. M-10 (IAM).(In other drafts Ch. XXIX is numbered 40, or 47: Ed.)

Footnote 2 continued next page.

I. B. Failing that first principle, no other principle receives justice.

1. Justice does not succeed by its decision in the self-evident case. Such a case will survive the most arbitrary abuse of discretion, even totalitarianism.

2. That is why the petition, of right, was our Constitutional birthright in 1776 and in 1791.[3]

---

[2] (Continued)

In 1774, Providence, R.I., Care, op. cit., pp. 25-26, "These words have been excellently expounded by later acts of Parliament, that by no means common right, or common law, should be disturbed or delayed; no, though it be commanded under the great seal, or privy seal, order, writ, letters, message or commandment whatever, from the King or any other; and that the Justices shall proceed, as if no such writs, letters, order, message, or other commandment, were come to them; all our Judges swear to this; for it is part of their oaths...."

[3] Care, op.cit., pp. 21-22, comment on Chapter XXIX:

"...These words deserve to be written in letters of gold...they being so essential to our English freedom and liberties, and because my Lord Coke, in the Second part of his Institutes, has many excellent observations on this chapter: I shall recite his very words."

.... (Footnote continued next page)

II. Each great moment of progress has been man's rediscovery of enduring truth in its modern setting.

A. The Great Charter in 1215 A.D. was thus understood on the very day of its birth.[4]

---

[3] (Continued)

(p. 26) Justice or right. We shall not sell, deny or delay, justice or right; neither the end, which is justice, nor the mean, whereby we may attain to the end, and that is the law....

....

2. The law is called rectum, because it discovereth that which is crooked or wrong...."

[4] In 1215 A.D., of the people, by the people:

"...these are not properly the concessions of Kings, but affirmations of the common law, and ratified by the suffrages of the people, who claimed them as their rights and privileges, and as their birthright...." Care, op. cit., p. 6.

In 1215 A.D., for the people:

Magna Charta, "Chapter I. A Confirmation of Liberties.

...We have granted also, and given to all the freemen of our realm, for us and our heirs for ever, the liberties underwritten, to have and to hold to them and their heirs for ever."
Care, op. cit., p. 10

(Footnote continued next page)

---

[4] (Footnote continued)

In 1215 A.D., a rebirth for the people.

"...this charter is, for the most part, only declaratory of the principal grounds of the fundamental laws and liberties of England; no new freedom is hereby granted, but a restitution of such as lawfully they had before, and to free them of what had been usurped and encroached upon them by any power whatsoever; and therefore you may see this charter often mentions sua jura, their rights, and libertates suas, their liberties, which shows they had them before, and that the same now were confirmed...." Care, op. cit., pp. 7 and 8.

In 1689 A.D., a rebirth of the people.

Comment on "Bill of Rights--Declaration of Rights of the People of England".

"The moment that the Declaration of Right was made on the behalf of the English people, and acknowledged by the prince of Orange and his consort as the Supreme law, in future to be observed; at that instant the constitution became renovated, the power of the crown was acknowledged to flow from its only natural source, the people....the offspring of this connexion is the genuine RIGHTS OF MAN, which, apart from all visionary theories, confer happiness, content and brotherly affection upon its votaries." Luffman, John, The Charters of London Complete; also Magna Charta, and the Bill of Rights. London, 1793, pp. 421-422.

II. B. Our founding fathers, in their current literature of 1776 and 1791, knew that they witnessed a rebirth.[5]

III. Discretionary leave, as a condition to petition for mandamus,[6] is an erroneous condition.

---

[5] See the colonial library on human rights of 1776: Columbia Law Review, January, 1917, Vol. 17, pp. 19-20, Hazeltine, H.D., "The Influence of Magna Carta On American Constitutional Development"; including Care, op. cit.; 5th Edition, 1721, one of the first seven books printed in America.

[6] Rule 31 of this Court, "The petition in any proceeding seeking the issuance of a writ by this court authorized by 28 U.S.C. sec. 1651 (a) or 28 U.S.C. sec. 2241 shall be prefaced by a motion for leave to file such petition...."

In Farnum v. Connecticut and New York, letters to plaintiff from Clerk of this Court:

Jan. 29, 1958 "...under Rules 21 and 31 these papers should have been printed. To avoid the necessity of printing these documents, it is suggested that you forward forty copies of a short motion for leave to dispense with such printing....All of these papers will be held pending further advice from you...."

Feb. 4, 1958, "'Photo offset' printing has not been regarded by the Court as compliance with the Rules requiring 'printing' of papers unless a motion to accept such process in lieu of printing is submitted for the Court's action...."
(Footnote continued next page)

III.A. The Ninth Amendment[7] of the U.S. Constitution protects the filing of this Petition by right, not by leave.

B. Therefore leave to file the instant Petition is neither annexed, nor incorporated by reference.

C. Under our Constitutional heritage this petition for mandamus is filed to be heard of right, and any contrary rule is invalid under the Ninth Amendment.

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6 (Continued)

Please note plaintiff's Motion To Docket in this case, received by the Clerk of this Court on February 3, 1958.

7 The Ninth Amendment: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

CHAP. XXVII.

Tenure of the King, in Socage, and of another by Knight's Service. Petit Serjeanty.

IF any do hold of us by fee-farm, or by ſocage, or burgage, and he holdeth lands of another by Knight's ſervice, we will not have the cuſtody of his heir, nor of his land, which is holden of the fee of another, by reaſon of that fee-farm, ſocage or burgage. Neither will we have the cuſtody of ſuch fee-farm, ſocage or burgage, except Knight's ſervice be due unto us out of the ſame. We will not have the cuſtody of the heir, or of any land, by occaſion of any petit ſerjeanty that any man holdeth of us by ſervice, to pay an arrow, or the like.

CHAP. XXVIII.

Wager of Law ſhall not be without Witneſs.

NO Bailiff, from henceforth, ſhall put any man to his open law, nor to an oath, upon his own bare ſaying, without faithful witneſſes brought in for the ſame.

CHAP. XXIX.

None ſhall be condemned without Trial: Juſtice ſhall not be ſold or deferred.

NO freeman ſhall be taken or impriſoned, or diſſeized of his freehold, or liberties, or free cuſtoms, or be outlawed, or exiled, or any otherwiſe deſtroyed; and we will not paſs ſentence upon him, nor condemn him, but by lawful judgment of his peers, or by the law of the land. We will ſell to no man, we will not deny or defer to any man, either juſtice or right.

NOTES.

No freeman ſhall be taken, &c. Theſe words deſerve to be written in letters of gold, and I have often wondered that they are not inſcribed in capitals, in all our Courts of *Judicature*, *Town Halls*, and moſt

EXHIBIT S-III

PETITION FOR WRIT OF MANDAMUS, and

BRIEF IN SUPPORT THEREOF.

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NO. 717 MISC.

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR A WRIT OF MANDAMUS TO THE

UNITED STATES DISTRICT COURT, SO. DIST. NEW YORK

Henry Merritt Farnum, Petitioner	
v.	U. S. Dist. Court, SDNY
International Association of Machinists, Appellee	Civil No. 129-88

Each of the rulings and orders of the District Court at hearing on notice, cited herein on pages 3 and 4 (IAM), "Citations To Orders of District Court", should be corrected by this Court by writ of mandamus.

The authority of this Court to issue that writ, and the effect of the orders to be corrected, are outlined herein under "Jurisdiction", pages 5 and 6 (IAM).

Plaintiff contends that each of those rulings and orders constitutes an abuse of judicial power with the result of defeating this

Court's appellate jurisdiction, in a manner not remediable through ordinary appeal. That result is analyzed on page 26 (IAM) under "Impairment of Jurisdiction of This Court".

Wherefore petitioner prays:

1. That a writ of mandamus issue from this Court directed to the following Judges of the United States District Court for the Southern District of New York: Hon. William B. Herlands, Hon. Archie O. Dawson, Hon. Edward Weinfeld, and Hon. E. J. Dimoch. That the writ require each Judge to show cause on a day to be fixed by this Court why mandamus should not issue from this Court directing each of said Judges to vacate and expunge from the record each ruling, order and judgment denying plaintiff's application for appointment of a three-judge Court, and dismissing the complaint.

2. That petitioner have such additional relief and process as may be necessary and appropriate in the premises.

Respectfully submitted,

Henry Merritt Farnum,
Petitioner

CITATIONS TO ORDERS BY DISTRICT COURT

Three events during negotiation of a new contract between the defendant Union and plaintiff's employer, the Kollsman Instrument Company, deprive the plaintiff of his rights protected by the Ninth Amendment of the United States Constitution.

The Constitutional issues raised by each of those three events relate (1) to the new contract recently in negotiation, and (2) to the negotiation of future contracts thereunder.

At the time of each of those three events plaintiff moved on notice for appointment of a three-judge Court to adjudicate the respective issue. Each of the three motions on notice was preceded by plaintiff's application to the respective Judge in chambers, for relief pending hearing on notice.

Each of the three Judges endorsed his orders on the moving papers. Those orders are not reported. They are reprinted chronologically infra, starting on page C-1 (IAM). All proceedings herein were in the United States District Court for the Southern District of New York.

Event #	U.S.D.J.	Date of Order (1958)
1	Hon. William B. Herlands	Jan. 21
		Jan. 28
2	Hon. Archie O. Dawson	Feb. 6
		Feb. 13
3	Hon. Edward Weinfeld	Feb. 21
		Feb. 26 & Mar. 1

At hearing on notice March 6, plaintiff moved before Judge E. J. Dimoch for a stay pending this Petition, and defendant moved for summary judgment dismissing the complaint. The resulting order and judgment, Opinion No. 24190, was filed March 17.

JURISDICTION

The first event is defendant's undemocratic conduct of the meeting of the membership of the defendant Union on January 19, 1958. At that meeting the Negotiating Committee's recommendation of 12 days for negotiation before any strike, was cut to 2 days. Plaintiff was there deprived of his right to make his proposal on the issues, although he is a member of the Union.

The second event is the defendant's failure on January 22, 1958 to submit the Company's last offer before the strike to impartial vote by the membership of the Union.

The third event is the imminent execution of a contract between the defendant and the Company. That contract deprives plaintiff, and all persons similarly situated, of Constitutional rights (1) as a consequence of the first two events complained of, (2) by failing to provide protection in the new contract against the same events in future negotiations, and (3) by subjecting the plaintiff to the invalid terms and conditions of the Constitution of the International Association of Machinists.

In each of those three events the defendant acts under the authority of statutes of the United States, to deprive the plaintiff of rights protected by the Ninth Amendment of the Constitution of the United States.

At the time of each of the three events plaintiff moved on notice, under 28 USC, sections 2281, 2282, and 2284, for appointment of a

three-Judge Court to hear the respective issue, and to order an injunction. Such appointment is in each instance denied by the single judge.

Plaintiff then moved for a stay pending this Petition for appointment of a three-Judge Court. By Opinion No. 24190 the single judge denied plaintiff's motion, and granted summary judgment dismissing the complaint.

The result is to impair the appellate jurisdiction of this Court under 28 USC, section 1253.[1]

The jurisdiction of this Court is invoked under 28 USC, section 1651 on "Writs".[2]

Therefore a writ of mandamus is the correct remedy.[3]

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[1] 28 USC, sections 1253 and 2281, reprinted in original Petition, p. A-4.

28 USC, section 2282, reprinted infra, p. A-1 (IAM).

All page references to Petition in the upper right hand corner of any page of this document, are to plaintiff's original Petition for Writ of Mandamus, dated January 18, 1958 and received by the Clerk of this Court on January 29, 1958 in Farnum v. Connecticut and New York.

[2] Reprinted in original Petition, p. 4.

[3] Original Petition, pp. 23-24, "3. Impairment of Jurisdiction of this Court".

QUESTIONS PRESENTED

Plaintiff's purpose in this Petition is to get to trial on the merits of the following important issues of human rights, and related issues of fact in this case.

In a democracy, what are the constitutional rights of an employee to influence and to vote on the terms of his employment contract in a Union Shop? What right does he have to persuade his fellow-employees? What right to an impartial, secret ballot by the membership on the Company's last offer before a strike? What right to present proposals for pay based upon the merit system? What right to challenge the defendant's unconstitutional regulation of each of those freedoms? What right to adjudication of those freedoms by federal Courts?

Plaintiff's original Petition to this Court presented five practical criteria to guide the development of human rights.[4]

Those same five questions are presented in the instant case. The specialized pursuit is Labor-Management, rather than Medico-Legal. The constitutionality of federal statutes, in addition to state statutes, is here in issue.

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[4] Petition, "Reasons For Granting the Writ", subdivisions numbered 1 to 5, pp. 16-32; also pp. 33-34.

CONSTITUTIONAL DOCUMENTS AND STATUTES INVOLVED

The Constitutional documents involved are the Ninth Amendment to the Constitution of the United States, and the Declaration of Independence.

The complaints are brought under USC, Title 28, section 1343, as amended by the Civil Rights Act of 1957, Part III, sec. 121; under USC, Title 42, sections 1983 and 1985; and under other statutes, as hereinafter more fully appears.

Plaintiff challenges the constitutionality of the Labor Management Relations Act, 29 USC, sections 159 (a) and (f), and 173 (c); and other statutes, as appears in the record.

Other statutes in issue also are listed by title and citation in the Index, supra.

STATEMENT

Plaintiff's purpose in this Petition, is to get to trial on the merits of the important issues of human rights, and related facts herein presented by three events in the negotiation of the new Company-Union contract.

The defendant's Constitution provides for expulsion of any member advocating or encouraging employment under the "merit...system".[1]

The authority of that contract over the plaintiff depends upon federal statute, the Labor Management Relations Act.[2]

Under the new Company-Union contract, the plaintiff is subjected to that Constitution of the defendant as a condition of employment at his trade in a Union Shop. Defendant's Constitution blocks review of those issues by this Court.[3]

The negotiation of that new contract was the occasion for three events. At a regular meeting of the defendant in the course of those events in negotiation, plaintiff attempted to advocate and encourage the merit system in the

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[1] Constitution of International Association of Machinists, Art. J, section 6; infra, p. B-53 (IAM).

[2] 29 USC, sec. 159 (a) and (f); infra, pp. A-2 and A-3 (IAM).

[3] Art. K, sec. 14; infra, p. B-56 (IAM).

new contract.

The defendant barred the plaintiff in that effort,[4] and negotiated the new contract which perpetuates that bar as a condition of plaintiff's employment in his trade. That bar prevents any effort by the plaintiff to advocate or encourage the merit system in any future negotiation by his sole bargaining representative. Moreover, it blocks judicial review under the Civil Rights Act of 1957, and related statutes.

The issues of unconstitutionality presented by the three events therefore extend to plaintiff's employment under the new contract just negotiated, and extend to all successor contracts to be negotiated thereunder, including the subjects currently open to negotiation.

Therefore those issues are urgent and far-reaching. Inasmuch as they properly raise issues of injunctive relief, they must be tried and adjudicated by a three-judge Court.

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[4] Exhibit VII, infra, p. B-22 (IAM).

Contrast the following cases cited in Opinion No. 24190, infra, p. C-9 (IAM).

SEC v. Otis & Co., D.C.N.D.O., E.D., 18 F. Supp. 100, 1936; affd. 106 F.2d, 579. Held: injunction a proper remedy, although illegal acts ceased when plaintiff raised the issue, and suit not filed until 2 months later.

San Francisco Lodge No. 68 of I.A.M. v. Forrestal, 58 F. Supp. 466, 1944. A class suit on behalf of the members of a Union Local. The defendant's only actions on the issue had thus far been decided in favor of the plaintiff.

Event #1. 48 hours for negotiation.

On January 19, 1958, the membership of the defendant Union met at the Jamaica Armory, Jamaica, New York, for decisions on contract negotiations between the defendant and the Company. The previous contract had expired the 1st of January.

At that meeting, when recognized by the presiding officer, plaintiff attempted to present a proposal which in his judgment was reasonably adapted to resolve the deadlock between the defendant and the Company, and which was consistent with the Negotiating Committee's recommendation of further time for negotiation.

On that single issue the defendant then violated plaintiff's rights under the Ninth Amendment to the United States Constitution, in five ways.[5]

Plaintiff also challenges that meeting as undemocratic in numerous other actions.

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[5] Plaintiff's Exhibit II, infra, item 10 starting on page B-11(IAM) outlines the five violations. Item 11 reprints the text of plaintiff's proposal on teamwork incentives and profit sharing.

For further details, see Second Affidavit of Plaintiff, infra, pp. B-14 (IAM)ff.

The meeting as thus conducted by the defendant rejected the recommendation of its own Negotiating Committee, cutting to 48 hours the 12 days recommended for negotiation.

The next day, January 20, plaintiff delivered to the defendant the Notice of Complaint and of Application for Restraining Order, plaintiff's Exhibit I; infra, p. B-1 (IAM).

Within the 48 hour strike deadline, on Tuesday, January 21, plaintiff moved in chambers for a restraining order pending hearing of the issues of undemocratic conduct of the meeting, including the issue of plaintiff's inability to present his proposal. The motion was denied at about 4:20 P.M.[6]

Event #2. The Company's last offer before the strike.

At 4:30 P.M. that day, January 21, the first shift finished their last day of work before the strike. The Company's last offer[7] was distributed to the first shift as they left the plant. That offer also was presented that day to the Union's Negotiating Committee. The defendant's recommendation to reject that offer

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[6] Infra, p. C-1 (IAM).

[7] Plaintiff's Exhibit III.

was distributed to the employees during the next shift,[8] and time and place of the balloting the next day was announced by the defendant.

On that next day, January 22, the balloting was cancelled by the defendant, and the strike began.

On January 27 the first meeting of the membership during the strike was held.[9]

On January 28 at hearing on notice in open Court, Judge Herlands denied plaintiff's motion for a restraining order, and denied appointment of a three-judge Court to adjudicate plaintiff's right to present his proposal at the meeting on January 19th, and to adjudicate other issues of undemocratic conduct by the defendant at that meeting.[10]

On February 7th the plaintiff served his motion to amend the complaint, and to join as defendants the Company, the Federal Mediation and Conciliation Service, the National Labor Relations Board, and the New York State Mediation Board.

Plaintiff further moved for appointment of a three-judge Court to hear plaintiff's motion for injunctive relief to enable the membership to have a fair and impartial vote on the Company's

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[8] Plaintiff's Exhibit IV, infra, pp. B-17 (IAM) to B-19 (IAM).

[9] Second Affidavit of Plaintiff, Jan. 28, 1958, p. 3; infra, p. B-16 (IAM).

[10] Infra, p. C-2 (IAM).

last offer. After denial by the Court in chambers on Feb. 6th, plaintiff's motion on notice was heard on February 13 in open Court, and again denied by Judge Dawson. Amendment of the complaint, however, was granted.[11]

Event #3. End of the 27-day strike.

Two days later, on February 15, the Union called a meeting to vote on the Company's offer of settlement.

An item-by-item comparison demonstrates that offer to be substantially identical to the one which the defendant refused to submit to a vote of the membership before the strike.[12] There are small differences which depend upon the trend in living costs, and which may make the new offer slightly lower, or slightly higher, than the Company's last offer before the strike.[13]

The membership accepted the Company offer by a voting majority of more than 2 to 1. The strike ended on February 18th, after 27 days.

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[11] Plaintiff challenges 29 USC, sec. 173(c) of the Labor Management Relations Act, as unconstitutional. Reprinted infra is the statute, p. A-4(IAM), the amended complaint, p. B-2(IAM), and the Court order at p. C-5 (IAM).

[12] Comparison between plaintiff's Exhibits IV and XXXV; infra, pp. B-17(IAM) to B-19(IAM).

[13] Exhibits, footnote 12, items marked (*).

The proposal thus submitted to the membership for balloting, limited itself to the specific provisions cited by the defendant as issues in the Company's last offer. It did not ratify the Constitution of the International Association of Machinists. It did not add any new provisions to remedy in future negotiations the events of which plaintiff complains in this case.

With the end of the strike on February 18th, "reasonable equilibrium is restored comparable to the status of negotiation last January 19th...."[14]

On February 20th, plaintiff served his motion returnable February 25th, for these four items of relief, in view of the end of the strike.

a. An injunction against the enforcement of any contract between the defendant and the Company, which as a condition of employment subjects the plaintiff to the Constitution of the International Association of Machinists. That document deprives the plaintiff of rights protected by the Ninth Amendment of the Constitution of the United States.[15] That document is given the force of law by the Labor Management Relations Act, without establishing any criteria therefor, and the statute is thereby unconstitutional.[16]

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[14] Item 5 of prayer, Amended Complaint, infra, p. B-10 (IAM).

[15] Original Petition, p. A-1.

[16] 29 USC, secs. 159(a) and (f), infra, p. A-2 (IAM).

The "Code" in Art. K of the Union Constitution is invoked by the defendant, seeking to defeat the jurisdiction of this Court.[17]

b. Joinder of the Kollsman Instrument Company, as a necessary party to this case on this issue.

c. An order for an injunction against any provision of the new contract preventing plaintiff's right to influence the membership of the defendant in a democratic manner. The Constitution of the International Association of Machinists violates the Ninth Amendment on this issue.[18]

d. Appointment of a three-judge Court to adjudicate those additional issues.

By Court orders, in each instance by a single Judge, each of the above four items of relief are denied; stay pending this petition for appointment of a three-judge Court is denied; and dismissal of the complaint is granted.[19]

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[17] For example, defendant's Affidavit Jan. 27, 1958, infra, p. B-51 (IAM). See also defendant's Third Affirmative Defense, defendant's Answer; defendant's motion for summary judgment dated Feb. 21, 1958; and Court order March 1, 1958, infra, p. C-7 (IAM).

[18] For example, Art. J, secs. 5 and 6; infra, p. B-53 (IAM).

[19] Infra, pp. C-7 to C-9 (IAM).

REASONS FOR GRANTING THE WRIT

When a ma chooses a career in an industry with Union Shops, for example in aircraft instrument systems and in ballistic missiles,

a. does he forever surrender to the discretion of the Union, his democratic right to influence the Union's proposals in contract negotiations?

b. does he surrender his direct access to federal courts; for example under the Civil Rights Act of 1957?

What share is preserved to him by the Constitution of the United States in shaping teamwork, human rights, communications, automation, and atoms for peace, into the incentives to build America's next 20 years?

In 1776 and 1791 those rights generally arose between two individuals, the employer and employee. The employee's freedom to pursue his career, to bargain with his boss, and to protect those freedoms through the federal Courts, is a fundamental civil liberty protected by the Declaration of Independence and by the Constitution of the United States.[1]

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[1] By the Declaration of Independence, in the "pursuit of happiness". Butcher's Union v. Crescent City Company, 111 U.S. 746, 762; 28 L. Ed. 585; 4 S. Ct. 652; 1884.

By the U.S. Constitution, Amendment I.; original Petition, pp. 16-18, 30-31, and A-1.

Today the principal opportunity to pursue many such careers is limited to Companies with Union Shops. There the Union accepts a fiduciary responsibility as bargaining representative of each individual employee.

Plaintiff here asserts the violation of the foregoing human rights, in his own behalf, and on behalf of all persons similarly situated. In addition to the loss of freedom, the defendant's actions caused a daily loss shared by employees and the Company during the strike, in excess of $100,000.

The Constitutional issues are important [2] that will prevent a repetition of such losses of freedom and money under the provisions of the new contract, and in future negotiations thereunder.

This Court may notice judicially the fact that the nation now faces a battery of negotiations in basic industries, each negotiation presenting many of those Constitutional issues.

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[2] Note also on page 16 of the original Petition, under "Reasons For Granting The Writ":

"1. Constitutional Leadership in the Free World--the Ninth Amendment."

2. Civil Rights Act of 1957.

The jurisdictional issues are:

a. Jurisdiction of the subject matter;

b. Availability of injunctive and declaratory relief;

c. Necessity to exhaust Union remedies;

d. Standing to litigate on behalf of all other employees, members of defendant Union; and

e. Method of amendment of complaint.

a. Jurisdiction of the subject matter.

This case presents as subject matter, violation of civil liberties by a federal statute.[3] It presents the additional issue of such violation by the conduct of a labor Union, and by a labor Union constitution, each under authority of federal and state statutes.[4]

Civil liberties in issue are an

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[3] Labor Management Relations Act, 1947, 29 USC, sections 159 (a) and (f), and 173 (c); infra, p. A-2 (IAM).

[4] For original jurisdiction of each issue, see supra, p. 6 (IAM), and original Petition, pp. A-2, A-3, and A-5.

employee's right to influence and to participate in the democratic conduct of his Union, his right to a fair and secret ballot on the Company's last offer before a strike, and his right to a Union constitution which recognizes the supremacy of the law. Each of those civil liberties is protected by the Ninth Amendment.

The District Court erred in denying joinder of parties necessary to that subject matter.[5]

The Kollsman Instrument Company is a party to any new and future contract, with a direct or indirect requirement whereby plaintiff is subjected to the Constitution of the International Association of Machinists, as a condition of employment. The Company is directly affected by an employee's right to vote on their last offer before a strike. The Company is an indispensable party, whose rights, duties and interests will be affected by the final decree in this case.

The Federal Mediation and Conciliation Service is an indispensable party, with the relief in issue comprising an injunction against the federal statute administered by that Service.[6]

The indispensable status of the New York Mediation Board can only be determined by joinder

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[5] F.R.C.P., Rule 19 (a) and (b); infra, p. A-5 (IAM).

[6] 29 USC, secs. 172 (d), and 173 (a) and (c); infra, pp. A-3 and A-4 (IAM).

herein, or by a Court order as to the absence of jurisdiction, unless that Board itself confirms that they are without jurisdiction.

The National Labor Relations Board is either a necessary party in that its rights and duties are affected, for example in the future administration of secret ballots; or a formal party, as in Court decision as to complete relief.

The Office Employes International Union is an indispensable party. The defendant admits a mutual agreement to strike together on January 22, 1958,[7] and the office employes apparently attended and voted at the Union meeting on January 19th.

b. Availability of injunctive and declaratory relief.

Injunctive relief is requested by the complaint, and by each motion in this case, specifically within the Civil Rights Act of 1957.[8]

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[7] Plaintiff's Exhibit V comprising defendant's Strike Bulletin No. 2; infra, p.B-20(IAM)

[8] Original Petition, pp. A-2 and A-3.

Reasons, IAM; Petition, p. 21

c. Necessity to exhaust Union remedies

The original jurisdiction of district Courts under the Civil Rights Act of 1957 is further jeopardized by the defendant in this case. He invokes the constitution of the International Association of Machinists to defeat the jurisdiction of any Court.[9] That constitution provides for a trial procedure and three successive appeals, in the last stage waiting either upon a Grand Lodge Convention, or upon a referendum to the national Grand Lodge membership at large comprising 850,000 members. Violation of the Ninth Amendment by that "Code", and the unconstitutionality of the entire Grand Lodge constitution, are issues for adjudication.[10]

d. Standing to litigate on behalf of all other employees, members of defendant Union.

Class suits under Rule 23 of the Federal Rules, are consistent with labor-management laws.[11]

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[9] Defendant's Exhibit "B", Art. K; Answer, pp. 3 and 4; Affidavit In Opposition by Mr. Henry Kaltun dated Jan. 27, 1958; infra, p. B-51.

[10] Plaintiff's Exhibit XXXVIII, infra, pp. B-40 and 41 (IAM).

[11] Tisa et al. v. Potofsky et al., 90 F. Supp. 175, 1950; Ketcher et al. v. Sheet Metal Workers International, 115 F. Supp. 802, 1953.

e. Method of amendment of complaint

When a verified amended complaint presents on a certain date, with merit, the issue of defendant's failure to act, can the defendant while denying such merits in Court nevertheless correct the error, demand a second service of the amendment, and claim that the amendment was later than the defendant's correction?

The facts follow.

On February 7, 1958, plaintiff personally served on defendant an amended complaint, alleging defendant's failure to submit to the membership for balloting, the Company's final offer comprising certain provisions.

On February 8 that amended complaint, signed and verified, was filed with the Clerk, annexed to plaintiff's motion for a Court order.

On February 13 at hearing on notice, plaintiff's motion to amend was granted by the Court.

On February 14 the defendant notified all employees by telegram, of a meeting the next day to vote on a Company offer. That offer was almost identical to one subject in plaintiff's amended complaint.[12]

On February 24 the defendant alleged

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[12] Comparison between defendant's two documents, plaintiff's Exhibits IV and XXXV, infra, p. 3-17 (IAM).

that the complaint is not amended.[13]

On February 26, Judge Weinfeld at hearing in open Court ruled that his order on the motion noticed for that day, would be based upon the complaint as amended.[14]

Yet thereafter on March 5, the defendant again alleged that the complaint is not amended.[15]

The reason for defendant's disregard of two Court rulings, may be inferred from the foregoing events.

In accordance with the ruling of Judge Weinfeld on February 26, plaintiff relies upon his amended complaint served February 7, and allowed February 13.

3. Impairment of Jurisdiction of this Court.

In this case, plaintiff's application for appointment of a three-judge Court was denied with reference to the issues presented by each of

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[13] Affidavit of defendant's Attorney, by an associate, Arthur L. Galub, Esq.; page 3.

[14] Infra, p. C-7 (IAM).

[15] Affidavit by Arthur L. Galub, Esq.; page 2. Please note plaintiff's Affidavit of Feb. 24, 1958, setting forth the above facts up to that date; now designated plaintiff's Exhibit XXXVI; infra, p. B-39 (IAM).

three motions.

As to the issues of Constitutionality of federal statutes, jurisdiction of the three-judge Court is based upon 28 U.S.C., section 2282.[16]

For the reasons presented in the original Petition, only this Court has power to remedy the impairment of its appellate jurisdiction by District Court denial of plaintiff's applications for appointment of a three-judge Court.

4. Labor-Management.

This case presents the question of democratic conduct of a labor Union. Plaintiff by this Petition seeks trial of the issues. By law, such issues must be tried before a three-judge Court. Those issues relate to the new contract now going into effect, and to future negotiations under the terms of that contract.

Those issues include undemocratic conduct of Union pre-strike meeting; lack of submission to impartial balloting by the membership, of the Company's last offer before a strike; and the Union Constitution, a nullity. Those issues invoke the Ninth Amendment to the United States Constitution.

In adjudicating those issues as the basis for future negotiations under that contract, the Court may decide whether events before and

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[16] Infra, p. A-1 (IAM).

during the 27 day strike recently concluded were in the proper interest of any party, and whether the results were preventable.

a. The right of an employee to influence the membership of his Union democratically, is not subject to the discretion of the Union.

b. Implicit in the employee's right to democratic unionism, is his right that the Company's last offer before a strike be submitted to impartial secret ballot by the membership.

c. Please note: the employee's further right of access to the Courts, for example under the Civil Rights Act of 1957, was developed supra, p 24 (IAM).

a. Right to influence decisions.

Event #1 in this case presents the deprivation of plaintiff's right to influence decisions, violated by the undemocratic conduct of a meeting, in the discretion of the defendant.

That issue is presented by plaintiff's prayer, on page 7 of the amended complaint:

"....

5. That relief further to provide, when reasonable equilibrium is restored comparable to the status of negotiation last January 19th, that the proposals of plaintiff and others relevant to the issues be heard, the issues understood, and decisions brought to bear upon the proposed and subsequent contracts, in a democratic manner...." (Infra, p. B-10 IAM)

The Union Constitution in this case presents the further deprivation of that right of the plaintiff.

That Union Constitution is protected by the authority of the Labor Management Relations Act, establishing the defendant as plaintiff's sole bargaining representative.[17]

The Union Constitution establishes many undemocratic duties for its members. Violation of those duties invites expulsion in the discretion of the Union, under the unconstitutional procedure of the "Code" for grievances.[18]

The expelled member is automatically deprived of his right to influence the membership of the defendant Union, which is his sole bargaining representative.

Such unconstitutional "duties" forbid:

the proposal of "merit" plans, such as plaintiff's teamwork incentives, bonuses, or profit sharing;[19]

the proposal of overtime work, at premium rates of pay after a basic work week of any length;[19]

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[17] 29 U.S.C., sec. 159 (a) and (f); infra, p. A-2 (IAM).

[18] Supra, p. 24 (IAM).

[19] Constitution of International Association of Machinists, defendant's Exhibit B, Art. J, secs. 5 and 6; infra, p. B-53 (IAM).

the introduction of non-Union members to the trade;[20]

any conduct contrary to the desires of the Union, in their uncontrolled discretion;[21]

and many other actions, comprising arbitrary and frivolous duties.[22]

b. Right to secret ballot on Company's last offer before strike.

The fundamental safeguard in any representative democracy, is responsibility to the people.

That safeguard must apply to any Negotiating Committee of the defendant, particularly prior to a threatened strike. Unless both the Company and the Union know that their bargaining position is certain to be tested by impartial balloting of the membership, their mistakes as negotiators and their responsibility therefor are concealed from everyone, including themselves.

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[20] Constitution of I.A.M., Art. J, sec. 7; infra, p. B-53 (IAM).

[21] For example ibid., Art. K, sec. 3, lines 43 and 44; infra, p. B-55 (IAM).

[22] For example ibid., lines 27 to 34, and lines 40 to 42; infra, p. B-54 (IAM). See also Art. J, sec. 9.

Without that safeguard, each bargaining party is under pressure to be unreasonable, with no opportunity for a ballot to refute unfair criticism, even by fellow-committeemen.

Such bargaining is vulnerable to every danger.

In the instant case the Union further found its own bargaining position during the strike to be undermined by lack of such balloting before the strike,[23] further prejudicing the interests of the plaintiff, and of all other members of the Union.

5. Human Rights Under the Declaration of Independence.[24]

It is apparent from the original Petition that the right to the pursuit of happiness, under the Declaration of Independence, is protected under the Ninth Amendment of the Constitution of the United States. That protection includes the employee's unalienable right "...to follow any of the common occupations of life....This right is a large ingredient in the civil liberty of the citizen...."[24]

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[23] Plaintiff's Exhibit XXXIV, paragraph 3; infra, pp. B-36 and B-37 (IAM).

[24] See original Petition, p. 31, citing Butcher's Union Company v. Crescent City Company, 111 U.S. 746, 762, 28 L. Ed. 585, 4 S.Ct. 652, 1884.

For the member of a labor Union that civil liberty includes the right to democracy, protected by the Ninth Amendment.

6. Growth of Human Rights.

Here, then, is confirmation of the forecast in the original Petition, that "by use of the Ninth Amendment, man's new awareness of his individual dignity and destiny will be tested by such issues as judicial construction of civil rights statutes, jurisdiction, access to facts of record, legalities of each specialized pursuit, and the evolution of unalienable human rights endowed in the name of America's Declaration of Independence."[25]

CONCLUSION

For the foregoing reasons, this Petition should be granted.

Respectfully submitted,

Henry Merritt Farnum,
Petitioner,
70 W. 46th Street,
New York 36, New York.

April 5, 1958

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[25] Original Petition, p. 34.

TITLE 28, SECTION 2282

Injunction against enforcement of Federal statute; three-judge court required.

An interlocutory or permanent injunction restraining the enforcement, operation or execution of any Act of Congress for repugnance to the Constitution of the United States shall not be granted by any district court or judge thereof unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title.

LABOR MANAGEMENT RELATIONS ACT

(1947)

TITLE 29, SECTION 159

Representatives and elections--(a) Exclusive representatives; employee's adjustment of grievances directly with employer.

Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: Provided, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: Provided further, that the bargaining representative has been given opportunity to be present at such adjustment.

....

Filing by union of its constitution, by-laws, and report; contents of report.

(f) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section ....unless such labor organization and any national or international labor organization of

which such labor organization is an affiliate or constituent unit (A) shall have prior thereto filed with the Secretary of Labor copies of its constitution and by-laws and a report, in such form as the Secretary may prescribe, showing--

....

(6) a detailed statement of, or reference to provisions of its constitution and by-laws showing the procedure followed with respect to, (a) qualifications for or restrictions on membership, (b) election of officers and stewards, (c) calling of regular and special meetings, (d) levying of assessments, (e) imposition of fines, (f) authorization for bargaining demands, (g) ratification of contract terms, (h) authorization for strikes, (i) authorization for disbursement of union funds, (j) audit of union financial transactions, (k) participation in insurance or other benefit plans, and (l) expulsion of members and the grounds therefor....

....

Section 172 (d) All mediation and conciliation functions of the Secretary of Labor or the United States Conciliation Service under section 8 of the Act entitled "An Act to Create a Department of Labor", approved March 4, 1913 (USC 29, section 51), and all functions of the United States Conciliation Service under any other law are transferred to the Federal Mediation and Conciliation Service....

Section 173.(a) It shall be the duty of the Service, in order to prevent or minimize interruptions of the free flow of commerce growing out of labor disputes, to assist parties to labor

Section 173 (a), Continued

disputes in industries affecting commerce to settle such disputes through conciliation and mediation.

....

(c) If the Director is not able to bring the parties to agreement by conciliation within a reasonable time, he shall seek to induce the parties voluntarily to seek other means of settling the dispute without resort to strike, lock-out, or other coercion, including submission to the employees in the bargaining unit of the employer's last offer of settlement for approval or rejection in a secret ballot. The failure or refusal of either party to agree to any procedure suggested by the Director shall not be deemed a violation of any duty or obligation imposed by this Act.

RULES OF CIVIL PROCEDURE

FOR THE UNITED STATES DISTRICT COURTS

Rule 19. Necessary Joinder of Parties.

(a) Necessary Joinder. Subject to the provisions of Rule 23 and of subdivision (b) of this rule, persons having a joint interest shall be made parties and be joined on the same side as plaintiffs or defendants. When a person who should join as a plaintiff refuses to do so, he may be made a defendant or, in proper cases, an involuntary plaintiff.

(b) Effect of Failure To Join. When persons who are not indispensable, but who ought to be parties if complete relief is to be accorded between those already parties, have not been made parties and are subject to the jurisdiction of the court as to both service of process and venue and can be made parties without depriving the court of jurisdiction of the parties before it, the court shall order them summoned to appear in the action. ....

IAM, Pl. Exhibit I

NOTICE OF COMPLAINT AND OF APPLICATION FOR RESTRAINING ORDER

....

4. On January 19, 1958, at a meeting at the Jamaica Armory, Jamaica, New York, defendant Union ordered a strike in 48 hours, with Tuesday, January 21, 1958 as the final working day before the strike, unless events in negotiation intervened.

5. The conduct of said meeting violated the Constitution of the United States, including its Amendment IX.

6. The International Association of Machinists is hereby notified that prior to 10:30 A.M., January 21, 1958, a complaint will be filed against them by said Henry Merritt Farnum, in the United States District Court for the Southern District of New York, on the above and related issues, and that the plaintiff in that action will move for appointment of a three-judge Court to hear said issues; and will move at said hour of 10:30 A.M., or as soon thereafter as counsel may be heard, for a restraining order and temporary injunction against said strike scheduled for that date.

....

(s) Henry Merritt Farnum

Confirming copies delivered to defendant by hand, and by certified mail #7486856, special delivery

(Note, on mailed original: duplicates to Eastern Regional Office, IAM...; District No. 15, IAM ....)

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Henry Merritt Farnum, Plaintiff	
v.	Filed
International Association of Machinists, Defendant	Jan. 21, 1958

COMPLAINT

Civil No. 129-88

1. This complaint arises under United States Code, sections 1331 and 1343 of Title 28, sections 1983 and 1985 of Title 42; and other statutes; as hereinafter more fully appears.

2. As a civil liberties issue, no amount in controversy is necessary; although the amount in controversy in fact exceeds $3,000.

3. Plaintiff, Henry Merritt Farnum, is a citizen of the United States and of the State of New York, residing at 70 W. 46th Street, New York 36, N.Y.

4. Said plaintiff is a member of Precision Lodge No. 797, International Association of Machinists, in contract negotiations with plaintiff's employer, the Kollsman Instrument Company,

80-08 45th Ave., Elmhurst 73, New York. All rights, privileges, immunities and relief claimed by plaintiff, he also claims on behalf of all employees of that Company who are members of that Lodge.

5. The office of Lodge No. 797 of the defendant Union is located at 80-07 Broadway, Elmhurst 73, New York. That Lodge is in District 15 of that Union, with offices at 7 E. 15th Street, New York 3, New York. The Regional Office of that Union is at 250 W. 57th Street, New York 19, New York. The Grand Lodge of the International Association of Machinists, affiliated with AFL-CIO, has offices in the Machinists Building, Washington, D.C.

6. Under the Laws of the United States and of the State of New York, the defendant Union is the bargaining representative of the plaintiff in negotiations for a new contract with said Company. The Negotiating Committee is understood to be involved with such negotiations now, substantially on a 24 hour basis.

7. Last Sunday, January 19th, 1958, that Lodge of defendant Union held a meeting open to the Kollsman membership, at Jamaica Armory, Jamaica, Long Island, New York.

8. The conduct of that meeting by the defendant, deprived the plaintiff of his rights under the Constitution of the United States, including its Amendment IX.

9. The meeting as thus conducted, called a strike against said Company in 48 hours, with Tuesday, January 21, 1958, the final working day unless events in negotiation intervene.

10. A principal issue at that meeting was the period of time to be allowed for negotiation before a strike. After numerous unconstitutional events which are included in the subject matter of this complaint, the membership of that Union rejected the recommendation of their own Negotiating Committee, that the Union refrain from striking during the month of January; and substituted therefor a negotiating period of 48 hours.

11. For example, the plaintiff sought to offer a proposal which in his judgment was reasonably adapted to resolve the deadlock between the defendant Union, and the Company, and which would have been consistent with the Negotiation Committee's recommendation of further time for negotiation. Plaintiff's motion, if allowed, would have explored all plans for sharing the benefits of modern technical progress and teamwork, including teamwork bonuses and profit-sharing.

12. On the single issue of that attempted motion by the plaintiff, the defendant violated plaintiff's Constitutional rights in five ways.

13. The foregoing is one of many instances, whereby the meeting failed to protect plaintiff's Constitutional right to orderly and reasoned discussion and decision of the important issues at hand.

14.(a) Plaintiff complains that the actions by the defendant deprive the plaintiff of rights, privileges and immunities secured by the Constitution of the United States, and by Acts of Congress providing for equal rights of citizens.

(b) Plaintiff further complains of deprivation by such actions of his rights, privileges and immunities under color of any state law, statute, ordinance, regulation, custom or usage, either by representatives of the defendant only, or by their concerted agreement with other persons.

Plaintiff prays for:

(1)Appointment of a three-judge Court to determine the facts and resolve the issues here presented, and to grant appropriate relief;

(2)Such relief to include interlocutory and permanent injunctions against the practices set forth in this complaint;

(3)Such relief further to include declaratory relief against such practices in the future;

(4)A restraining order against the strike called for January 22, 1958, pending determination of the issues here presented;

(5)All other relief to which plaintiff may be entitled in his own right, and on behalf of all other persons similarly situated.

70 W. 46th St.,
New York 36, N.Y.

(s) Henry Merritt Farnum,
Plaintiff

This amendment of the original complaint strikes the original item 14 and prayer, and substitutes the following items numbered 14 to 22, and the following prayer.

14.(a) Kollsman Instrument Company, plaintiff's employer, is a corporation organized and existing under and by virtue of the laws of the State of New York, having an office, and plant where plaintiff is employed, at 80-08 45th Ave., Elmhurst 73, New York.

(b) The office of the Regional Director, Federal Mediation and Conciliation Service, is at 1016 Parcel Post Building, New York 1, New York.

(c) The office of the Regional Director, National Labor Relations Board, is at 2 Park Avenue, New York 16, New York.

(d) The office of the District Director, State Mediation Board, New York State Department of Labor, is at 270 Broadway, New York, New York.

15.The events here set forth in items 16 through 21, comprise events reported to the Union membership by their Business Representative on January 27, 1958, at the meeting announced in plaintiff's Exhibit V.

16.In negotiations between the Union Negotiating Committee and the Company, on Monday, January 20, and through Tuesday afternoon, January 21, the Company repeatedly requested that each new Company offer be submitted to the vote of the membership of the Union. Until after the Company's final offer hereinafter described, the Union withheld any promise to submit the

issue to the people. The federal mediator counseled that the Union had no obligation to submit the issue to the vote of the membership.

17. On Tuesday, January 21, 1958, between 3:30 and 4 P.M., the Company in bargaining session with the Union Negotiating Committee, announced the Company's final offer. That offer approximately tripled the offer rejected two days before by the Union membership, in their strike vote described in item 9 of the original complaint.

18. (a) At 4 P.M. that afternoon, with first shift due to quit in thirty minutes for the last time before the strike, the Union negotiators disclosed to the federal mediator a basis of settlement representing a substantial concession from previous demands, which the mediator stated to justify hope for agreement that afternoon. The Union negotiators stated willingness to recommend to the membership acceptance of that basis.

(b) The mediator could not arrange for negotiations on the Union's new proposal, until 4:30 P.M. had passed.

19. (a) At that moment of 4:30 P.M., while the negotiators were being reconvened, the Company was distributing to each employee on the first shift, as he left the plant, a written announcement of the Company's final offer in item 17 above, plaintiff's Exhibit III. That offer concluded, "please exercise your right by casting your ballot tomorrow".

(b) The Union Negotiating Committee strongly objected to the Company's action in distributing

that written announcement. Principally as the result of those objections, the Negotiating Committee reversed their previous position by stating that the Company would be picketed the next day, including any period that the polls were open.

(c) By 6:30 P.M. the Negotiating Committee decided privately to authorize vote by the membership on the Company's final offer, and to recommend rejection of that offer. Those decisions were reduced to writing and distributed to the second shift before work ceased at 3:30 the next morning, one copy comprising plaintiff's Exhibit IV.

20. On that next day, January 22, the polls were never opened by the Union officers, and no vote of the membership was taken.

21. (a) The Company's final offer expired that day, by its terms, and has not been renewed.

(b) The Union has withdrawn its proposal in item 18-a above, in return by the Negotiating Committee to their original demands.

(c) Negotiations have not been resumed. The Union does not plan to contact the Company.

22. Plaintiff complains, and says:

(a) Federal and state statutes requiring the plaintiff to join a specific Union as a condition of employment, and establishing that Union as his sole bargaining representative, are subject to the rights reserved to the people by Amendment IX of the Constitution of the United States.

(b) For example, deprivation of plaintiff's right that the Company's final offer shall be submitted to an impartial, secret ballot of employees, violates Amendment IX.

(c)As a further example, deprivation of plaintiff's right that the meeting at Jamaica Armory last January 19th be conducted in a democratic manner, violates Amendment IX.

(d) The actions by the defendant deprive the plaintiff of rights, privileges and immunities secured by the Constitution of the United States, and by Acts of Congress providing for equal rights of citizens.

(e) Plaintiff further complains of deprivation by such actions of his rights, privileges and immunities under color of any state or federal law, statute, ordinance, regulation, custom or usage, either by representatives of the defendant only, or by their actions in concert with other parties.

Plaintiff prays for:

1. Appointment of a three-judge Court to determine the facts and resolve the issues here presented, and to grant appropriate relief. Such jurisdiction is based upon USC, Title 28, sections 2281, 2282, and 2284. Such issues of fact include confirmation that the Company's last offer is still available.

2. Such relief includes interlocutory and permanent injunctions against actions by any party violating plaintiff's rights here established.

3. Such relief further includes declaratory relief against such actions in the future.

4. Such relief specifically includes an injunction against the United States Conciliation Service, or any other party who may invoke the applicable provisions of U.S.C., Title 29, section 173, against a Court order for secret ballot on the Company's final offer; an injunction against Union picketing during the balloting; such vote to be ordered forthwith, on motion* to all employees, at polls impartially administered;

5. That relief further to provide, when reasonable equilibrium is restored comparable to the status of negotiation last January 19th, that the proposals of plaintiff and others relevant to the issues be heard, the issues evaluated, and decisions brought to bear upon the proposed and subsequent contracts, in a democratic manner.

6. All other relief is requested, to which plaintiff may be entitled in his own right, and on behalf of all other persons similarly situated.

(s) Henry Merritt Farnum,
Plaintiff

70 W. 46th Street,
New York 36, New York.

(February 7, 1958. Jurat)

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* "Motion" should read "notice".

IAM, Pl. Exhibit II

AFFIDAVIT OF PLAINTIFF

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

The undersigned, Henry Merritt Farnum, being duly sworn, deposes and affirms as follows.

....

4. On January 1, 1958 the previous contract between that defendant Union, and said plaintiff's employer, expired. The Negotiating Committee of that Union is now believed to be negotiating with that Employer, substantially on a 24 hour basis, concerning the terms of a new contract.

....

8. The Report of that Negotiating Committee recommended that the Union membership take two actions: (1) reject the offer of the Employer, and (2) permit negotiations to continue through the month of January, before striking.

9. The plaintiff then was recognized by the presiding officer, and sought to offer a proposal which in his judgment was reasonably adapted to resolve the deadlock between the Union and the Employer, and which would have been consistent with the Negotiation Committee's recommendation of further time for negotiation.

10. On this single issue, the defendant then violated plaintiff's rights under the Constitution of the United States, in five ways:

    a. Plaintiff was obstructed in his brief discussion of his proposal, thus preventing understanding by the membership;

b. Plaintiff was denied his right to an impartial presiding officer during such discussion;

c Plaintiff was forcibly restrained from reading his proposal, thereby depriving the membership of any chance for a reasoned decision on its merits, or on any ruling by the presiding officer;

d. Although a written copy of plaintiff's proposal had been delivered to the presiding officer, that officer refused to read or to allow a vote on that proposal, and declared it out of order;

e. Vote by the membership on a point of order, was not permitted.

11. Plaintiff's motion was, "The motion to be amended, as follows,
3. That our negotiating committee be authorized to explore all plans and authority necessary to create an effective plan for sharing the benefits of modern technical progress and teamwork. Such sharing of benefits includes teamwork bonuses or profit-sharing."

12. The foregoing is one of many instances, whereby the meeting failed to provide for orderly and reasoned discussion and decision of the important issues at hand. The rudiments of parliamentary procedure were lacking in the meeting and its decisions.

13. On Monday, January 20, 1958, plaintiff delivered by hand a copy of the Notice of Complaint and of Application for Restraining Order, attached to the complaint as Plaintiff's

Exhibit I. Mr. George Trevors, Financial Secretary of said Lodge, there received that copy.

On that day, copies of that Notice were mailed by certified mail, special delivery, to each of the three offices of the Union listed above in paragraph 1.

Dated at New York, New York, this 20th day of January, 1958.

(s) Henry Merritt Farnum

(Jurat)

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

Henry Merritt Farnum, being duly sworn, deposes and says:

At the meeting in Jamaica Armory on January 19, 1958, when the plaintiff was recognized by the presiding officer to speak on the motion, he came to the podium to hand Mr. Kaltun a handwritten copy of the motion to amend, plaintiff's Exhibit VII. From that Exhibit, and from plaintiff's First Affidavit, it is clear that the motion was in the form of an amendment, adding a third provision to those then before the meeting. The presiding officer made no objection to the form of the motion.

While plaintiff spoke briefly on his amendment, the presiding officer interrupted several times with the words, "You are out of order", inviting disorder in the meeting. Plaintiff repeatedly claimed a point of order, and asked that it be put to a vote of the membership. The officer made no movement to retire in favor of the Vice-President, or to debate or put to a vote plaintiff's point of order, although under Rule 18 such was the presiding officer's responsibility.

The five results were exactly as set forth in plaintiff's first Affidavit, paragraph 10.

After plaintiff physically was removed from the microphone, plaintiff repeatedly called for a point of order directly in front of the platform, in accordance with Rules 14 and 15, but plaintiff was unrecognized despite the high priority of his parliamentary inquiry.

Plaintiff then delivered to the presiding officer a handwritten note, keeping a duplicate comprising plaintiff's Exhibit VIII, as follows:"My amendment was within the purpose of this meeting as announced, and therefore was in order."

Thereafter the presiding officer recognized the plaintiff, who repeated aloud the message of Exhibit VIII, and requested that a vote be taken on the point of order. Contrary to Rules 14 and 15, the presiding officer declined to allow the vote.

The fact that plaintiff's motion to amend was germane to the purpose of the meeting, and to the main motion, is clear even from the Affidavit of Mr. Kaltun.

Plaintiff's Exhibit III, comprising the Company's final offer before the strike, was distributed to each employee on the second shift, as he entered the plant at 7 P.M. on Tuesday, January 21, 1958.

Plaintiff's Exhibit IV, comprising the Union's recommendation to vote to reject the Company's final offer, was distributed to each employee during the second shift that same day. At that time the employees were told that the polls would be open the next day, Wednesday, from 7 A.M. to 7 P.M., for voting on the Company's final offer at the usual voting place, American Legion Hall, Elmhurst, New York.

At 6:30 P.M. on January 22, 1958, plaintiff arrived at that Hall, intending to vote, and was told by the attendant in charge that no

voting had taken place at any time that day.

Plaintiff's Exhibit V, comprising Strike Bulletin No. 2, was distributed to the plaintiff at Strike Headquarters in Elmhurst on Saturday, January 25, 1958.

At the first strike rally on January 27, 1958, the Business Representative, Mr. Henry Kaltun, addressed the meeting. He advised that the Negotiating Committee had been displeased by the Company's distribution of plaintiff's Exhibit III. He stated that there had been no vote by the membership on the Company's last offer; that the Company offer expired by its terms on January 22; that the terms which the Union Negotiating Committee had stated to the United States mediator their willingness to accept January 21, were no longer acceptable; that there had been no bargaining since the strike began; and that the Union did not plan to call the Company.

A member of the Negotiating Committee then addressed the meeting, and asserted that the membership at Jamaica Armory on January 19th, 1958, had given the Committee full discretion to decide whether the Company's last offer would be submitted to the membership for a vote.

(s) Henry Merritt Farnum

Sworn to before me, this 28th day of January, 1958
....

(Jurat)

COMPARISON BETWEEN TWO COMPANY OFFERS,
using defendant's outline of each

Each offer comprises eleven items.

Eight pairs of items are identical in each offer.

In each of the other three pairs of items, the higher offer is marked (*).

Company's last offer before the strike	Company offer accepted at end of 27 day strike
(Exhibit IV)	(Exhibit XXXV)
1. An 18 month contract.	Length of contract: Jan. 1, 1958--June 30 1959.
2. General increase across the board 3% retroactive to January 1, 1958.	General 3% increase retroactive to Jan. 1, 1958 for all hours worked.
3. General increase of an additional 2% across the board as of July 1st, 1958.	Additional general *increase of 2½% starting July 1, 1958 for all hours worked.
4. Adoption now of a Pension Plan for Kollsman employees, Kollsman administered with a company contribution of five (5¢) cents per hour	(Item 5 in Exhibit XXXV) The Company is to pay 5 cents per hour per employee towards a Pension Plan starting April 1, 1959, to be

Company's last offer before the strike, Continued	Company offer accepted at end of 27 day strike, Continued
per employee. The payments to commence *on January 1st, 1959.	jointly administered by the Union and the Company; this money to be utilized to purchase the greatest benefits which can be obtained for the contribution; it being further agreed that nothing is to prevent a subsequent transfer into any other superior type of Pension Plan which can be mutually agreed upon between the Company and the Union.
5. Cost of living clause giving the employees any increase in the cost of living in excess of 2% of the difference in the B.L.S. index for New York City between January 1st, 1958 and July 1st, 1958 effective as of July 1, 1958.	(Item 4 in Exhibit XXXV) *An automatic cost-of-living increase on September 1, 1958, to be based on the August 15, 1958 cost-of-living index as released by the Bureau of Labor Statistics for New York City. The adjustment to be made upward only. There will be no decrease in case the cost-of-living index should show a decline.

Company's last offer before the strike, Continued	Company offer accepted at end of 27 day strike, Continued
....	....
"VOTE TO REJECT THE ABOVE"	12. THERE ARE TO BE NO REPRISALS AGAINST ANY EMPLOYEE BY THE COMPANY AS A RESULT OF THE STRIKE.

(NOTE: items 6 to 11 are the same verbatim, in both offers. The general subject-matter follows)

6. No lay-off while overtime continues.

7. Training programs to be formalized in writing.

8. Layoff seniority for transferees.

9. Notification to Union of new jobs.

10. Provision for shifts less than 8 hours.

11. No unemployment insurance during vacation.

IAM, Pl. Exhibit V

STRIKE BULLETIN NO. 2

Issued by Kollsman Strikers Committee,
Precision Lodge 797,
International Ass'n. of Machinists,
80-07 Broadway,
Elmhurst, Long Island.

Friday, Jan. 24, 1958.

First strike rally! This Monday at 11:00 A.M. At Sunnyside Gardens, 45th St. & Queens Blvd., Sunnyside, L.I. Bring your badge or Union book. This is for both plants. Be sure to attend.

....

4) The office workers are terrific: 700 members of O.E.I.U., Local 153, are on strike with us. They are certainly holding up their end of the picket line, men and women alike...They finally got the federal mediators to start talks between the office workers and the Company. Up to now, the Company didn't even bother to talk with the Office Union for more than a few minutes. Needless to say, the office people will not settle their contract until we sign our own contract.

One for all and all for one!

....

IAM, Pl. Exhibit VI

Original by hand to District 15, January 27, 1958, without receipt.
Copy of duplicate delivered by hand to Mr. Stephen Vladeck, Atty. for defendant, at 147 W. 42nd Street, New York, N.Y., January 27, 1958, without receipt.

January 27, 1958

Chief Counsel,
International Association of Machinists,
District No. 15,
7 E. 15th Street,
New York, N.Y. ....

Dear Sir,

This letter will confirm my understanding that Union officers responsible for the conduct of meetings of Kollsman employees will be present at the hearing of the above case in the United States Court House, Foley Square, in the City of New York, in Room 506 at 10:30 A.M. on January 28, 1958.

It is my understanding that those officers responsible for the conduct and records of the Union meetings from January 19, 1958 to January 27, 1958 inclusive, will be available at that hearing and adjournments thereof, with the records pertinent to those meetings and the issues of this case, and will be subject to call by the plaintiff as adverse witnesses.

Those officers include Mr. James Dugan, Recording Secretary, Precision Lodge 797; Mr. Henry Kaltun, Business Agent, District No. 15, I.A.M.; Mr. Frank Alexander, President, Precision Lodge 797; and Mr. Frank Coonsley, International Vice President, International Association of Machinists....

(s) Henry Merritt Farnum

EXHIBIT VII

The motion to be amended, as follows,

3. That our negotiating committee be authorized to explore all plans and authority necessary to create an effective plan for sharing the benefits of modern technical progress and teamwork. Such saring (Ed.: sharing) of benefits includes teamwork bonuses or profit-sharing.

I move the adoption of this amendment.

EXHIBIT VIII

Mr. Kaltun,

My amendment was within the purpose of this meeting as announced, and therefore was in order.

I cannot even get the floor to raise a point of order.

Yours sincerely,

H.F. #8508

MOTION FOR AMENDMENT, JOINDER, INJUNCTION AND BALLOTING

1. Plaintiff moves under Federal Rule 15 that leave be granted to amend the complaint by the amendment attached hereto.

2. Plaintiff moves under Federal Rule 19 that the following parties cited by name and address in the amended complaint, be joined as defendants in the above action: Kollsman Instrument Company, Federal Mediation and Conciliation Service, National Labor Relations Board, and New York State Mediation Board.

3. Plaintiff moves for a Court order for hearing forthwith by a three-judge Court of this motion for an injunction against the United States Conciliation Service, or any other party who may invoke the applicable provisions of U.S.C., Title 29, Section 173, against a Court order for secret ballot on the Company's final offer; for an injunction against Union Picketing during such balloting; and for a Court order of such vote by secret ballot forthwith, on notice to all employees, at polls impartially administered.

The above motion is hereby noticed for hearing at 10:30 A.M. in the forenoon, on February 13, 1958, at Room 506, United States Court House, Foley Square, New York, New York.

(s) Henry Merritt Farnum,
Plaintiff

PLAINTIFF'S AFFIDAVIT AND MOTION FOR JOINDER

STATE OF NEW YORK)
CITY OF NEW YORK) ss.:
COUNTY OF NEW YORK)

Henry Merritt Farnum, being duly sworn, deposes and says.

1. The headquarters for the Office Employes International Union in this area, comprising at least two Locals in addition to the International Union, are at 263 West 14th Street, New York, N.Y.

2. Local 153, at that address, is the bargaining representative of the office workers at Kollsman Instrument Company.

3. As confirmed by Strike Bulletin No. 2 issued by the defendant, comprising plaintiff's Exhibit V, said Local 153 has joined the defendant in the strike, with mutual agreement that neither will end the strike until both have satisfactory contracts with the Company.

4. Wherefore plaintiff moves that the Office Employes International Union be summoned and joined as a defendant in the above case.

(s) Henry Merritt Farnum

(Jurat, February 13, 1958)

IAM, Pl. Exhibit XVI

PLAINTIFF'S MEMORANDUM OF LAW

Originally filed January 29, 1958.

Duplicate copy annexed to plaintiff's Exhibit XXXIV, filed February 21, 1958.

(Note: this document is appended as a matter of record, not as a supporting brief. Therefore its citations are not indexed)

I. PLAINTIFF IS DEPRIVED OF RIGHTS PROTECTED BY THE NINTH AMENDMENT, UNITED STATES CONSTITUTION

A. The issues of the meeting at Jamaica Armory on January 21,*1958, and plaintiff's right that the meeting be conducted in a democratic way.

1. Plaintiff's right to be heard on the issue of profit-sharing (productivity and control of inflation)

2. Undemocratic conduct in overruling the recommendation of the Union Negotiating Committee, for no strike in January

3. Undemocratic procedure in determining discretion of Negotiating Committee, including submission of Company's final offer to vote of the people.

B. The issues of democratic conduct by Negotiating Committee and Union, after the meeting on January 21,* 1958.

---

* Should be January 19, 1958.

I- B-1. Inconsistent decisions on issue of submission of Company's final offer to vote of the people.

2. Method of decision as to acceptable offer

a. By recommendation of Committee

b. By decision of membership.

II. ISSUES OF CONSTITUTIONALITY OF UNION CONDUCT UNDER AUTHORITY OF STATUTES

A. Federal statutes

1. National Labor Relations Act; no duty to submit final offer to people

2. Labor Management Relations Act

B. State statutes, including New York State Labor Relations Act, Ch. 443, Laws 1936, as amended (secs. 703 to 708)

C. Issues for three-judge Court

1. Title 42, sec. 1983

2. Title 42, sec. 1985

3. Title 28, sec. 2281

4. Title 28, sec. 2282

III. ISSUES OF CONSTITUTIONALITY OF INJUNCTION STATUTES, AND AVAILABILITY OF INJUNCTIVE RELIEF

Clayton Anti-Trust Act '1914)

1. If in conflict with Point I above, Act is unconstitutional

2. If issue in instant case is undemocratic conduct, with no issue of right to strike, then Clayton Act does not prevent injunctive relief

B. Similarly, Norris LaGuardia Act

1. Section 4 (Title 29, sec. 104)

a. Impairment of authority of Supreme Court of U.S.

b. Issue of definition of labor dispute

2. Section 7 (Title 29, sec. 107)

a. Subdivision (b), issue of conflict with Amendment IX

b. Similarly, subdivisions (c) and (e)

C. Issue of unconstitutional conflict with Civil Rights Act of 1957 (Title 28, sec. 1343)

1. Three-judge Court should hear and decide issues

2. As Civil Rights case, no amount in controversy necessary

3. In alternative, original jurisdiction under Title 28, sec. 1331 (federal question), with more than $3,000 in

controversy, including class action under Rule 23, F.R.C.P.

D. Right to strike not in issue; restraining order and temporary injunction is against violations of Amendment IX, U.S. Constitution.

Respectfully submitted,

Henry Merritt Farnum,
Plaintiff

IAM, Pl. Exhibit XX

AFFIDAVIT BY PLAINTIFF

February 12, 1958

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

1. The strike by more than 4,000 members of the defendant Union, against Kollsman Instrument Company, continues in full force. The magnitude of the irretrievable daily loss of important production and personal income, is indicated by printed reports of a $100,000,000 backlog of orders, 94% military, with a large portion thereof comprising components of missiles and military aircraft.

2. No secret ballot, impartially administered, has been scheduled for vote by the employees on the Company's last offer.

....

6. a. The purpose of the order here moved is to subpoena the evidence and to order the necessary parties before the Court with the responsibility to make the decision, at the earliest possible date.

   b. That Court must be a three-judge Court, because of federal Constitutional issues including the amended National Labor Relations Act (plaintiff's Exhibit IX), and Amendment IX of the Constitution of the United States.

7. On February 8, 1958, plaintiff delivered subpoenas issued to the four Union officers designated in plaintiff's Order annexed hereto, to testify for the defendant at the hearing in item 5 above. Those four officers are the ones who have presided and reported at each of the

Union meetings during the period from January 19, 1958 to date. Two or more of those officers attended Company-Union negotiations during that period. The testimony of those four officers will be relevant to each of the issues noticed for the hearing. Each subpoena was delivered to the office of defendant's Precision Lodge 797, Elmhurst, New York.

....

Respectfully,

(s) Henry Merritt Farnum,
Plaintiff

(Jurat, dated February 12, 1958)

IAM, Pl. Exhibit XXX

PLAINTIFF'S AFFIDAVIT AND MEMORANDUM OF LAW

To Court at hearing February 13, 1958
Filing date February 14, 1958

(Note: this document is appended as a matter of record, not as a supporting brief. Therefore its citations are not indexed)

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

Henry Merritt Farnum, being duly sworn, deposes and says....

II. PLAINTIFF'S RIGHT TO NECESSARY JOINDER OF PARTIES, UNDER THE AMENDED COMPLAINT IN THIS CASE, IS PROTECTED BY THE CONSTITUTION OF THE UNITED STATES.
The Constitutional reasons are set forth supra, under I-A.

A. On the issue of plaintiff's right to a secret ballot, impartially administered, on the Company's last offer, Kollsman Instrument Company is an indispensable party, in that their rights, duties, or interests might (and of course would) be affected by the final decree. Jarvis v. Schackelton Inhaler Co., CCA Mich. 1943, 136 F 2d 116; Bendix Aviation Corp. v. Kury, DC N.Y. 1950, 88 F. Supp. 243.

B. The Office Employes International Union is an indispensable party, having a mutual agreement with the defendant, by his own admission, not to settle the strike independently. (Strike Bulletin No. 2, plaintiff's Exhibit V).

C. The Federal Mediation and Conciliation

Service is an indispensable party, with the relief in issue comprising an injunction against the federal statute administered by that Service. Plaintiff's Exhibit IX, citing U.S.C. Title 29, sections 172 (d), and 173 (a) and (c).

D. The indispensable status of the New York Mediation Board can only be determined by joinder or by a final Court order as to its concurrent jurisdiction, for no other party can commit that Board....

E. The National Labor Relations Board is either a necessary party in that its rights and duties are affected, as in the administration of a secret ballot; or a formal party, as in Court decision as to complete relief.

III. THIS COURT SHOULD RULE THAT A THREE-JUDGE COURT HAS ORIGINAL JURISDICTION.

A. The three-judge Court will have original jurisdiction under all four subdivisions of U.S.C., Title 28, section 1343, as amended by the Civil Rights Act of 1957.

1. That Court will determine the facts as to deprivation of rights or privileges by two or more persons, under subdivision (1). Such facts will, for example, relate to the following persons.

a. The two Unions with a mutual agreement.

b. The three presiding officers at meetings of the Union membership which are relevant to the issue of voting on the Company's last offer.

c. The members of the Negotiating Committee,

including one officer, who spoke to the membership at two of those meetings; and the other members of the thirteen-man committee.

d. The many other undemocratic actions and concerted actions, for example under items 13 and 22(c) of the amended complaint.

2. The Court similarly will determine the facts relevant to subdivision (2), as they involve more than one person, union, or division of a union; and as to subdivision (4) for example violating Title 42, sections 1983 and 1985, U.S.C. Likewise subdivision (3), for example in relation to the New York State Mediation Board.

B. The three-judge Court is required by U.S.C., Title 28, sections 2281, 2282, and 2284.

1. Unenumerated rights protected by Amendment IX of the United States Constitution, are new issues before the Supreme Court of the United States. For example, deprivation by the Labor Management Relations Act, of the employee's right to a secret ballot on the Company's last offer.

....

C. Injunctive relief is in issue as set forth in item 3 of the Motion therefor, noticed for hearing today.

D. With substantial issues of unconstitutionality, and the jurisdiction of the District Court thus established, "...it is the duty

III-D Cont.

of such judge to convene the three-judge Court, no matter what his own opinion may be ...."Carras et al. v. Monaghan, 65 F. Supp. 658, 1946.

E. That three-judge Court should receive forthwith the testimony and records of Union officials described in item 7 of the affidavit annexed to plaintiff's Motion For Order To Subpoena, directed to the persons listed in the Order annexed thereto.

Respectfully,

(s) Henry Merritt Farnum

(Jurat, February 13, 1958)

IAM, Pl. Exhibit XXXII

AFFIDAVIT OF NON-APPEARANCE UNDER SUBPOENA

February 20, 1958

STATE OF NEW YORK)
CITY OF NEW YORK) ss.:
COUNTY OF NEW YORK)

Henry Merritt Farnum, being duly sworn, deposes and says:

....

3. None of the parties subpoenaed appeared thereunder February 13th, nor did their attorney move to quash. At the hearing that day plaintiff's written Memorandum and oral argument stressed, as a matter of law, plaintiff's right to a hearing to receive testimony and Union records from the defendant's officers. Plaintiff filed in Court his Motion For Order To Subpoena with documents annexed, seeking an Order under item 2 of that Motion.

4. The issues noticed for hearing that day were joined by the Court's rulings at that hearing. Defendant handed to the plaintiff in Court at the time of those rulings, each of the four subpoenas annexed hereto, each in its envelope, at that time apparently unopened.

....

(s) Henry Merritt Farnum,
Plaintiff

(Jurat)

IAM, Pl. Exhibit XXXIV

AFFIDAVIT AND MOTION FOR INJUNCTION

February 20, 1958

The within motion is hereby noticed for hearing at 10:00 A.M. in the forenoon, on February 25, 1958....

STATE OF NEW YORK)
CITY OF NEW YORK) ss.:
COUNTY OF NEW YORK)

Henry Merritt Farnum, being duly sworn, deposes and says.

1. At a meeting of the membership of the defendant's Precision Lodge 797 on February 15, 1958, the defendant distributed to each employee defendant's Strike Bulletin No. 14, plaintiff's Exhibit XXXV, comprising the terms of the Company's most recent offer, with recommendation by the defendant's Negotiating Committee for acceptance by the membership.

2. That offer was substantially identical to the one which the defendant had failed to submit to a vote of the membership before the strike. There are small differences which depend upon the trend in living costs, and which may make the new offer slightly lower, or slightly higher, than the Company's final offer before the strike.

3. The defendant's Business Representative, Chairman of the Negotiating Committee, addressed the meeting. He stated that the defendant, at the time of important bargaining sessions with the Company during the strike, had

been battered with complaints from members who requested the chance to vote on the Company's final offer, and with threats that such persons would impair the strike by crossing the picket line. He stated that those conditions prevailed when the Negotiating Committee decided to call this meeting, for the purpose of balloting.

4. The membership thereupon voted by written ballot to accept the Company's offer, by a majority substantially greater than 2 to 1.

5. On February 18, 1958, after 27 days the strike ended.

6. Plaintiff therefore observes that reasonable equilibrium has been restored.

Upon this affidavit, the documents hereto annexed, and all of the prior proceedings in this case, plaintiff moves as follows.

A. Plaintiff moves for a court order for relief in accordance with paragraph 5 of the prayer of the amended complaint, "...when reasonable equilibrium is restored comparable to the status of negotiation last January 19th, that the proposals of plaintiff and others relevant to the issues be heard, the issues evaluated, and decisions brought to bear upon the proposed and subsequent contracts, in a democratic manner."

B. Plaintiff moves for a permanent injunction, enjoining the defendant against including in said contract any direct or indirect requirement, as a condition of employment by the Company, that the membership of the defendant is subject to, or bound by, the Constitution of the International Association of Machinists,

defendant's Exhibit B.

C. Plaintiff moves that the Kollsman Instrument Company is an indispensable party on these issues, and that the Company be joined as defendant under Rule 19, F.R.C.P.; and that said Company be enjoined against including in said contract any direct or indirect requirement whereby employment depends upon the employee's being subject to, or bound by, said Exhibit B.

D. Plaintiff moves for appointment of a three-judge Court, to hear the issues here set forth in paragraphs A to C inclusive, including plaintiff's application for a permanent injunction; the hearing to be set for March 3, 1958.

E. Plaintiff here moves for a restraining order against the defendant, and against the Kollsman Instrument Company joined as defendant, thereby enjoined until such hearing March 3, 1958 from entering into, ratifying, validating or enforcing any contract in violation of said paragraphs A to C, inclusive.

....

(s) Henry Merritt Farnum,
Plaintiff

(Jurat, February 20, 1958)

(Plaintiff's Exhibits XVI, XXX, and XXXV annexed)

IAM, Pl. Exhibit XXXVI

AFFIDAVIT AND NOTICE OF AMENDED COMPLAINT

STATE OF NEW YORK)
CITY OF NEW YORK) ss.:
COUNTY OF NEW YORK)

Henry Merritt Farnum, being duly sworn, deposes and says.

1. On February 7, 1958, plaintiff personally served on defendant's Attorney, Vladeck and Elias, 147 W. 42nd St., New York 36, New York, documents including the following: a copy of the original complaint; a copy of plaintiff's Verified, Amended Complaint; and plaintiff's motion that "leave be granted to amend the complaint by the amendment attached hereto".

2. On February 8, 1958, the original amendment, signed and sworn, was filed with the Clerk.

3. At hearing in open Court on notice February 13th, Judge Archie O. Dawson marked that motion "Granted"; with endorsement of that date, "...Item 1 allowed....So ordered...."

4. By motion on notice and served February 20, 1958, in para. A, plaintiff cited a direct quotation from the "amended complaint".

5. Defendant now avers that the complaint is not amended. This notice confirms the fact of amendment as of February 13, 1958. For defendant's convenience plaintiff will, upon request, requisition a copy from the Court Record.

(s) Henry Merritt Farnum

(Jurat dated February 24, 1958)

IAM, Pl. Exhibit XXXVIII

AFFIDAVIT AND MEMORANDUM ON DEFENDANT'S CONSTITUTION

Affidavit dated February 26, 1958

The Constitution of the International Association of Machinists, defendant's Exhibit B, is a nullity for violation of the Constitution of the United States including its Amendment IX.

I. Its "Code" for grievances, Art. K, is unconstitutional.

A. It impairs the jurisdiction of all Courts, including all federal Courts and including the Civil Rights Act of 1957 (Art. K, sec. 16, lines 43 to 46).

B. Its exhausting four-stage process of appeal culminates either in appeal to the Grand Lodge National Convention, or a national referendum directed to 850,000 members. (Art. K, sections 14 to 16 inclusive).

C. Its procedure for trial and review is unconstitutional; for example,

1. A member's attorney must be a member of I.A.M., and thus subject to each invalid requirement of the Constitution (Art. K, sec. 10)

2. There is no right of public trial (Art. K, sec. 11)

3. There is no right to appear in person on appeal (Art. K, secs. 14 to 16 inclusive)

I- D.The Code covers all invalid"duties", infra; with no criteria for other "duties". (Art. K, sec. 1, lines 26-33)

II. The duties of members are unconstitutional; for example

A.Deprivation of rights in a democracy:

1. Art. J, sec. 5.

2. Art. J, sec. 6.

3. Art. J, sec. 7.

4. Art. J, sec. 9.

5. Art. K, sec. 3, lines 27 to 31; 32 to 34; 40 to 42; etc.

III. Important legal liabilities are negated, for example

A.Art. XIII, Sec. 8 (Pensions)

B.Art. XVIII, Sec. 10 (Special pensions).

(s) Henry Merritt Farnum,
Plaintiff

(Jurat on separate page,
dated February 26, 1958)

IAM, Pl. Exhibit XXXX

NOTICE OF RECORD, WITH AFFIDAVIT

STATE OF NEW YORK)
CITY OF NEW YORK) ss.:
COUNTY OF NEW YORK)

TO THE CLERK OF COURT:

Henry Merritt Farnum, being duly sworn, deposes and says.

This is notice that the documents filed in the record of this case comprise, without being limited to, the following. Therefore the record in any further proceedings by plaintiff, including Petition for Writ of Mandamus, comprises at least such documents, and documents filed hereafter in this Court.

Roman numerals refer to plaintiff's Exhibits. Capital letters refer to defendant's Exhibits.

Complaint, filed January 21, 1958.

I. Notice of Complaint and of Application For Restraining Order, delivered by hand and by certified mail January 20, 1958.

II. Affidavit of Plaintiff (3 pages).

Summons to International Association of Machinists, & Return.

Order January 21, 1958, with endorsement, denying restraining order and setting January 28th for hearing on motion for restraining order pending hearing before three-judge Court.

Plaintiff's Motion For Restraining Order Pending Hearing (by three-judge Court), heard by Judge William B. Herlands on January 21, 1958, after notice of intention to file complaint. With endorsement by Judge Herlands January 28, 1958, denying plaintiff's Motion in all respects.

Second Affidavit of Plaintiff (revision as filed), 3 pages.

III. Company's last offer before the strike, January 21, 1958.

IV. Defendant's recommendation on Exhibit III, distributed to employees on next shift thereafter; 2 pages.

V. Defendant's Strike Bulletin No. 2, January 24, 1958; 2 pp.

VI. Plaintiff's letter dated January 27, 1958, to defendant's Chief Counsel.

VII. Plaintiff's Motion To Amend, attempted at meeting January 19, 1958.

VIII. Duplicate of plaintiff's written complaint to presiding officer at meeting January 19th.

For defendant, Affidavits by Mr. Henry Kaltun and Mr. Frank Alexander.

A Constitution and By-Laws, Precision Lodge 797, District No. 15, International Association of Machinists, June, 1957.

B. Constitution of the International Association

of Machinists, effective January 1, 1957.

IX. Labor Management Relations Act, USC Title 29, sections 172 (d) and 173 (a) and (c); annexed to Exhibit XI.

X. Verified, Amended Complaint Under Federal Rule 15 (a), as served and filed, with pages 6 and 7 revised; annexed to Exhibit XI.

XI. Motion for Amendment, Joinder, Injunction and Balloting, heard on notice Feb. 13, 1958 before Judge Archie O. Dawson. Exhibits III, IV, V, IX, and X annexed thereto.

XII. Order moved by plaintiff at hearing Feb. 13; item 1 granted; items 2 and 3 denied.

Affidavit and Motion For Joinder, filed by plaintiff at hearing Feb. 13th.

Motion For Amendment, Joinder, Injunction and Balloting, heard ex parte by Judge Dawson Feb. 6; hereby designated Exhibit XIII; with complaint, and Exhibits III, IV, V, and IX annexed; also original draft of Verified, Amended Complaint, pages 3 to 7; and Affidavit and Motion For Ruling, 2 pages.

Order moved by plaintiff in Exhibit XIII, before Judge Dawson in chambers Feb. 6th; hereby designated Exhibit XIV

Plaintiff's Memorandum of Law, hereby designated Exhibit XVI; annexed to plaintiff's Motion For Injunction, Exhibit XXXIV.

Affidavit by Plaintiff, annexed to Exhibit

XXI; hereby designated Exhibit XX.

Motion For Order To Subpoena, filed by plaintiff in Court at hearing Feb. 13th; hereby designated Exhibit XXI.

Order To Subpoena moved by Exhibit XXI; hereby designated Exhibit XXII.

XXV. Affidavit of Service, by plaintiff; notice of hearing Feb. 13th, documents annexed, and four subpoenas then returnable.

Annexed to Exhibit XXXII:

XXVI. (a) Subpoena to James Dugan, Recording Secretary, Precision Lodge 797; one of four returnable Feb. 13.

(b) Envelope enclosing same.

XXVII. (a) Subpoena to Frank J. Alexander, President, Lodge 797.

(b) Envelope enclosing same.

XXVIII. (a) Subpoena to Mr. Henry E. Kaltun, Business Representative, District No. 15, International Association of Machinists, 7 E. 15th St., New York 3, N.Y.

(b) Envelope enclosing same.

XXIX. (a) Subpoena to Mr. Fred Coonley, International Vice President, International Association of Machinists.

(b) Envelope enclosing same.

XXX. Affidavit and Memorandum of Law, filed by plaintiff in Court Feb. 13, 6 pages; also annexed to Exhibit XXXIV.

XXXI. Affidavit of Service of documents by plaintiff in Court January 28th.

XXXII. Plaintiff's Affidavit of Non-Appearance Under Subpoena; with Exhibits XXVI, etc., annexed.

Affidavit by defendant's Attorney Stephen C. Vladeck, Esq., filed in Court at hearing Feb. 13th.

XXXIII. Affidavit and Motion For Temporary Restraining Order.

Order moved by Exhibit XXXIII.

Memorandum denying order, endorsed by Hon. Edward Weinfeld, U.S.D.J., February 21, 1956, on Exhibit XXXIII, order annexed.

XXXIV. Affidavit and Motion For Injunction; with Exhibits XVI and XXX annexed.

XXXV. Defendant's Strike Bulletin No. 14, "A Proposed Settlement of the Kollsman Strike", annexed to Exhibit XXXIV.

Affidavit by Defendant's Attorney, Arthur L. Galub, Esq., Feb. 24, 1958.

Affidavit and Notice of Amended Complaint, hereby designated Exhibit XXXVI; annexed to Exhibit XXXVIII.

IAM, Pl. Exhibit XXXX

Answer by defendant, with duplicate Exhibits A and B.

Defendant's Affidavit, by Mr. Henry Kaltun, Feb. 21, 1958.

XXXIX. Affidavit and Motion For Stay Pending Petition to Supreme Court

Proposed order annexed to XXXIX.

XXXX. Notice of Record, with Affidavit.

XXXXI. Plaintiff's Applications at hearing March 6, 1958.

(s) Henry Merrit. Farnum,
Plaintiff

(Jurat dated March 6, 1958)

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS:

Henry Kaltun, being duly sworn, deposes and says:

I am a Business Representative of District Lodge No. 15 of the International Association of Machinists, AFL-CIO. and I am fully familiar with all the facts pertaining to the plaintiff's alleged cause of action....

(Page 2)....This is the meeting to which the plaintiff refers in his papers as having taken place on Sunday, January 19th, 1958 at Jamaica Armory, Jamaica, Long Island, New York....

(Page 3)....After the meeting was called to order by the President, Frank Alexander, he turned the chair over to me to make my report and conduct the discussion of the then current status of the relationship between Kollsman and the Union. I informed the membership of the latest Kollsman proposal and then stated that the Negotiating Committee recommended a rejection of the proposal but a further extension of the negotiation period through January 31st, 1958, during which time all would remain at work. Several men took the floor to discuss our recommendation. The gist of their statements and the sense of the thousands present were an approval of our recommendation to reject the Kollsman proposal, but that further negotiations continue only through Tuesday, January 21st, 1958, and in the event a mutually satisfactory agreement had not been reached by then, the strike should commence on the following morning.

...In the midst of the pertinent

discussion which was taking place, the plaintiff sought permission to speak and, of course, I immediately granted it. Instead of taking one of the floor microphones, he came up to the podium and used the one there; no effort was made to prevent this. To the surprise of everyone, the plaintiff completely ignored the topic under discussion and commenced to give the meeting a philosophical lecture about the advantages of a bonus or profit-sharing plan. He then moved that we substitute a bonus or profit-sharing plan in place of the Union proposals which had been approved by the membership months before and on which negotiations had been carried on for months. No one in the entire audience seconded his motion, so that even had it been made properly, it could not have been entertained. (Page 8, Rule 5, of Exhibit "A", annexed hereto and made a part hereof, consisting of the Constitution and By-Laws of Precision Lodge 797). Several shouts went up from the floor during this time that he was out of order. I personally informed him that he was out of order and must confine himself to the question before the membership. He completely ignored me and kept on talking in the same vein. Even shouts from the floor that he either sit down or "stick to the point" failed to deter him, but he continued on. I interrupted at least four or five times to tell him that he was out of order, and finally after about five minutes when I realized that he would continue to disregard orderly procedure and decorum, I reached out to take the microphone from him. As I did this, he shoved me aside, whereupon several members came up to the podium and led him away. As far as I know, he remained at the meeting but kept silent and made no attempt to appeal my ruling declaring him out of order. This, in essence, is what actually transpired at the meeting upon which plaintiff

predicates his right to seek injunctive and declaratory relief.

I might state that the thousands of persons present at the meeting did accept the recommendation of the Negotiating Committee to reject the latest Kollsman proposal, but turned down the Negotiating Committee's recommendation for a continuation of negotiations through January. In place of the latter, the membership granted the Negotiating Committee an additional forty-eight hours to either reach an acceptable agreement or commence the strike. We were unable to reach an agreement, so that the strike commenced at 6:00 A.M. on the morning of January 22nd, 1958 and is still in progress.

There is literally no merit whatsoever to the plaintiff's claim for relief, for he was offered full opportunity to speak on the issue under discussion at the meeting. He completely defied ordinary parliamentary procedure and ignored the "Rules of Order" for the conduct of meeting as contained in the Constitution and By-Laws of his Lodge 797.

Rule 11, among other things, provides that "Each member when speaking shall confine himself to the question under debate,". Rule 13 provides that "If a member, while speaking, be called to order he shall take his seat until the point of order is decided, when, if declared in order, he may proceed." Rules 14 and 15 provide an immediate and effective method of appeal for anyone aggrieved by the ruling of the chair. Plaintiff, however, took no such appeal, completely ignored his Lodge's Rules of Order and continued to speak even though he had been called to order several times. The very attempt by plaintiff to make his motion while another

question was on the floor violated Rule 18. I respectfully refer to Exhibit "A", pages 9, 10 and 11. (They are identical with provisions contained in the International's Constitution, pages 50 and 51 of Exhibit "B", likewise annexed hereto and made a part hereof).

Thus it can be seen that solely on the facts and merits plaintiff is not entitled to any of the relief he seeks. Furthermore, any civil action by the plaintiff at this time is untimely. We must bear in mind that he is a member of the defendant and is contractually bound by all of the terms and conditions of its constitution. The defendant's Constitution provides extensive provisions and elaborate trial procedure to protect all Local Lodges, District Lodges, officers and members against any improper conduct by any of them. (Exhibit "B", pages 77 et seq., Article "K"). The plaintiff not only made no effort to follow the procedure set forth there but in violation of that Constitution he has brought this action without first exhausting his remedies thereunder. I refer the Court to the last sentence on page 86 of Exhibit "B", reading as follows: "In no case shall any Local Lodge, District Lodge, officer, representative, or member thereof, appeal to the civil courts for redress until after having exhausted all rights of appeal under this Constitution."

....

(s) Henry Kaltun

(Jurat dated January 27, 1958)

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS:

FRANK ALEXANDER, being duly sworn, deposes and says:

I am the President of Precision Lodge No. 797, International Association of Machinists, AFL-CIO and I make this affidavit in opposition to the motion of the plaintiff.

The plaintiff is a member of the defendant Union and its local known as Precision Lodge No. 797.

I have read the affidavit of Henry Kaltun, annexed hereto, and I unequivocally state to this Court that all of the statements therein contained are true and accurate. I was personally present at the podium at all the times set forth in Mr. Kaltun's affidavit and witnessed the happenings he relates.

WHEREFORE, I respectfully pray that plaintiff's motion be denied in all respects.

(s) Frank Alexander

(Jurat dated January 27, 1958)

IAM, Def. Exhibit B, Art. J

CONSTITUTION *

OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS

Effective January 1, 1957

ARTICLE J, DUTIES OF MEMBERS

Overtime

Sec. 5. Members shall discourage the working of overtime. (20-21)

Piecework, Two Machines and Premium Systems

Sec. 6. In shops where it is not now a practice, no member is permitted to accept piecework, operate more than one machine, or accept employment under the premium, merit, task, or contract system. Members found guilty of advocating or encouraging any of these systems in shops where they are not now in operation shall be liable to expulsion. (22-28)

Introduction of Unqualified Persons

Sec. 7. Members who introduce into the trade any person other than a member of the I.A.M. shall be heavily fined for the first offense and expelled for the second offense. This Sec. shall not be construed to refer to apprentices properly indentured. (29-33)

*NOTE: line numbers on original pages, in parentheses herein.

ARTICLE K, CODE

Improper Conduct of Local Lodges, District Lodges, and Members Thereof

Sec. 1. The following actions or omissions shall constitute misconduct by a L.L. or D.L. which shall warrant suspension or revocation of the charter thereof as the evidence may warrant: (16-19)

....

Failure to perform duties as provided in this Constitution or violation of any of the provisions of this Constitution. (26-28)

Insubordination with respect to valid orders or directives of officers and/or the convention of the G.L. of the I.A.M. (29-31)

Any conduct unbecoming a L.L. or D.L. which is detrimental to the best interests of the I.A.M. (32-33)

....

Improper Conduct of a Member

Sec. 3....Refusal or failure to perform any duty or obligation imposed by this Constitution; the established policies of the I.A.M.; the valid decisions and directives of any officer or officers thereof; or, the valid decisions of the E.C. or the G.L. convention. (27-31)

Attempting, inaugurating, or encouraging secession from the I.A.M., or advocating or encouraging or attempting to inaugurate any dual labor movement.... (32-34)

Accepting employment in any capacity in an establishment where a strike or lockout exists as recognized under this Constitution, without permission. (40-42)

Sec. 3, Continued.

Any other conduct unbecoming a member of the I.A.M. (43-44)

....

Evidence

Sec. 10. Both the plaintiff and the defendant shall have the privilege of presenting evidence and being represented either in person or by attorney (the attorney being a member of the I.A.M.) (29-35)

....

Trial Procedure

Sec. 11....

3. Clear the trial chamber of all people except the trial committee, the trial reporter (who need not be a member of the I.A.M.), the plaintiff and his attorney, the defendant and his attorney, and a representative of the G.L., if in attendance. (38, 39, and 1-3)

....

Appeal from Decision of L.L. or D.L.

Sec. 14....

No party to the appeal shall have a right to appear in person before the I.P. However, the I.P., if he deems it necessary or desirable, in connection with his consideration of the appeal, may accord such a privilege.... (4-8)

Appeal from Decision of I. P.

Sec. 13....No party to the appeal shall have a right to appear in person before the E.C. However, the E.C., if it deems it necessary or desirable in connection with and consideration of the appeal, may accord such a privilege.... (28-32)

Appeal from Decision of E.C.

Sec. 16. An appeal may be made from a decision of the E.C. by any party in the proceedings before the E.C. to the G.L. convention, or to the membership at large by submission thereof to the referendum as provided in Art. XXIII....The Appeals and Grievance Committee shall, upon timely request, hear both parties to the appeal in person. However, no party to the appeal shall have a right to appear in person before the convention. (1-5, and 18-21)

...In no case shall any L.L., D.L., officer, representative, or member thereof, appeal to the civil courts for redress until after having exhausted all rights of appeal under this Constitution. (43-46)

Abbreviations (page x)

L.L. Local Lodge
D.L. District Lodge
G.L. Grand Lodge of the International Association of Machinists
I.P. International President
E.C. Executive Council

CONSTITUTION AND BY-LAWS

Precision Lodge No. 797
District No. 15
International Association of Machinists
Effective June, 1957

Rules of Order

....

Rule 13. If a member, while speaking, be called to order he shall take his seat until the point of order is decided, when, if declared in order, he may proceed.

Rule 14. If any member shall feel himself personally aggrieved by a decision of the chair, he may appeal to the body from the decision.

Rule 15. When an appeal is made from the decision of the chair the Vice-President shall then act as chairman; said appeal shall then be stated by the chairman to the meeting in these words: "Shall the decision of the chair be sustained as the decision of this Lodge?" The member then will have the right to state the grounds of appeal, and the chair will give reasons for his decision; thereupon the members will proceed to vote on the appeal without further debate, and it shall require a majority to sustain an appeal.

....

Rule 17. The presiding officer shall not speak on any subject unless he retires from the chair, except on points of order, and in case of a tie he shall have the casting vote.

AS AND FOR A SECOND
AFFIRMATIVE DEFENSE

....

NINTH: That heretofore and on or about January 19th, 1958, Precision Lodge No. 797 of defendant held a shop meeting at which plaintiff attended.

TENTH: That plaintiff during the course of such shop meeting, while he was speaking, was called to order, but refused to take his seat until the said point of order was decided.

....

TWELFTH: That plaintiff failed and refused to appeal to the meeting from the decision calling him out of order.

THIRTEENTH: That by failing to so appeal, plaintiff has waived any right or claim that he was improperly called out of order.

....

ORDER

Upon hearing of Plaintiff's Motion for Restraining Order pending Hearing on January 21, 1958, it is ORDERED

1. (Note: endorsed "W.B.H., U.S.D.J."; Ed.)

That hearing on the complaint in the above action, whereby plaintiff applies for interlocutory and permanent injunctions, declaratory and other relief to which he, and all persons similarly situated, may be entitled, is hereby set for 10:30 A.M. o'clock in the forenoon on January 28th, 1958, at Room 506, United States Court House, Foley Square, New York, New York; or as soon thereafter as counsel may be heard.

2. (Note: deleted with endorsement, "FRCP Rule 65-c" and "W.B.H., U.S.D.J."; Ed.)

It is further ordered, that to prevent irreparable loss, including irretrievable loss of time, and the possible damaging effect of a strike upon teamwork and the necessary bases of plaintiff's proposals, that defendant is hereby temporarily restrained pending said hearing, from any strike against the Kollsman Instrument Company, and from interfering with plaintiff's right to be heard on his proposal set forth in Plaintiff's Exhibit II.

....

(s) William B. Herlands
United States District Judge

January 21, 1958

Endorsement on moving papers, after hearing on notice:

"Motion denied in all respects--So ordered--

(s) William B. Herlands,
U.S.D.J.

January 28, 1958."

Henry Merritt Farnum,

Plaintiff

&

v.

International Association of Machinists,

Kollsman Instrument Company,

Federal Mediation and Conciliation Service,

National Labor Relations Board, and

New York State Mediation Board,

Defendants

ORDER

Upon hearing of plaintiff's Motion for Amendment, Joinder, Injunction and Balloting, on February 6, 1958 it is ORDERED:

1. Leave is granted to plaintiff to amend the complaint by the amendment attached;

2. Leave is granted to plaintiff to summon and join as defendants the four parties named in the caption above, in addition to the International Association of Machinists;

3. It is further ordered that defendants show cause why a three-judge Court should not be convened, to hear plaintiff's motion for injunction and order for secret ballot by employees on the Company's last offer, at 10:00 A.M. in the forenoon on February 11th, 1958, at Room 506, United States Court House, Foley Square, New York, New York; or as soon

thereafter as counsel may be heard.

Service by certified mail on February 7, 1958, of this order and documents attached for service upon each joined party, will be sufficient.

United States District Judge

Endorsement:

"Not Signed--Does not comply with the Rules or the Statutes.

(s) Archie O. Dawson"

ORDER

(Caption same as Feb. 6th order)

Upon hearing of plaintiff's Motion for Amendment, Joinder, Injunction and Balloting, on February 13, 1958, it is ORDERED:

1. Leave is granted to plaintiff to amend the complaint by the amendment comprising plaintiff's Exhibit X;
(Endorsed: "Granted")

2. Leave is granted to plaintiff to join as defendants the four parties named in the caption above, in addition to the International Association of Machinists;
(Endorsed: "Denied")

3. Hearing on the complaint as amended, before a three-judge Court, to hear plaintiff's motion for injunction and order for secret ballot on the Company's last offer, by their employees, is hereby set for _____M. in the ____noon on February ___, 1958 at _____', United States Court House, Foley Square, New York, New York; or as soon thereafter as counsel may be heard.
(Endorsed: "Denied")

Service by registered or certified mail of this order on February __, 1958, will be sufficient.

PLAINTIFF'S EXHIBIT XII _____ _____, USDJ

Endorsement: "Decided as shown on the motion paper. Item 1 allowed. Items 2 and 3 are denied. So ordered. (s) Archie O. Dawson, USDJ, Feb. 13, 1958"

ORDER

Upon hearing on February __, 1958 of plaintiff's Motion For Temporary Restraining Order, it is ORDERED:

The defendant is hereby enjoined until hearing ~~March 3~~, February 25, 1958, or any adjournment thereof, from entering into, ratifying, validating or enforcing any contract with Kollsman Instrument Company, 80-08 45th Avenue, Elmhurst 73, New York, which includes any direct or indirect requirement, as a condition of employment by the Company, that the membership of the defendant is subject to, or bound by, the Constitution of the International Association of Machinists, defendant's Exhibit B; or any contract negotiated without hearing the proposals of plaintiff, evaluating the issues thereof, and deciding those issues in a democratic manner.

Service of this order _____ on or before February __, 1958, will be sufficient.

_____
United States District Judge

Endorsement:

"The papers fail to indicate any basis for the issuance of a temporary restraining order and accordingly the application is denied.

February 21, 1958.

(s) Edward Weinfeld,
U.S.D.J."

Hearing on notice of plaintiff's Affidavit and Motion For Injunction, was held on February 26, 1958. That Motion, plaintiff's Exhibit XXXIV, is reprinted supra, pp. B-36 to B-38 (IAM).

Endorsements thereon follow.

February 26, 1958:

"Motion granted as indicated by the argument permitting amendment of complaint. Settle order on notice. Decision reserved on main motion.

(s) Edward Weinfeld,
U.S.D.J."

Dated March 1, 1958,
filed March 3:

"As to the balance of the motion, after a careful review of the papers, the Court finds thare is no basis for the grant of the extraordinary injunctive relief and other relief requested. Moreover, it does not appear plaintiff has exhausted his remedies within the Union in accordance with the procedure set up by the Union Constitution and by-laws.

(s) Edward Weinfeld,
U.S.D.J."

OPINION # 24190

Dimoch, D.J.

Defendant has moved for summary judgment dismissing the complaint.

Plaintiff moves for a stay pending a projected application by him to the United States Supreme Court for a writ of mandamus by which he will, in effect, seek review of previous orders of this court denying appointment of a three-judge court. Even had such an application actually been made to the Supreme Court it would not, in my opinion, have possessed sufficient merit to warrant a stay of proceedings in the District Court. The motion for a stay is therefore denied.

The action is one brought by a member of defendant labor union in which he complains that, at a union meeting where a strike settlement was discussed, he was deprived of his rights under the United States Constitution to make certain arguments. The strike has since been settled and the terms of a new contract agreed upon by a majority vote. Plaintiff nevertheless seeks by an amended complaint interlocutory and permanent injunctions against the practices set forth in this complaint "And declaratory relief against such practices in the future."

At the moment of the settlement of the strike this court became powerless to give plaintiff an opportunity to be heard by the union on that question and this case became moot. It is true that even where illegal acts have ceased a court of equity will sometimes enjoin their

repetition. That course is followed, however, only where there is likelihood of repetition. See Securities and Exchange Commission v. Otis & Co., D.C.N.D.O. E.D., 18 F.Supp. 100, 102, affd. sub nom. Otis & Co. v. Securities and Exchange Commission, 6 Cir., 106 F. 2d 579. It would be fantastic to think that the situation will ever arise where plaintiff seeks to be heard by the union on the same argument which he sought to interpose on the question of a pending strike settlement. He is not entitled to an injunction.

His plea for a declaratory judgment must be disposed of in much the same way. There must be an "actual controversy" between the parties to warrant a declaratory judgment. 28 U.S.C. sec. 2201. To be actual the controversy must be one which in fact exists rather than one which may occur. San Francisco Lodge No. 28, etc. v. Forrestal, D.C.N.D. Cal., S.D., 58 F. Supp. 466. There is no existing controversy here.

The motion for summary judgment dismissing the complaint is granted.

Dated: March 17, 1958.

(s) E. J. Dimoch,
United States
District Judge

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FILED
MAY 31 1958
JOHN T. FEY, Clerk

No. 963--Certiorari
No. 716--Misc., Mandamus

IN THE

SUPREME COURT OF THE UNITED STATES

1957-1958 Term

Henry Merritt Farnum,	Petitioner
v.	
State of Connecticut	
and	
New York State Department of Mental Hygiene,	Appellees

PETITIONER'S REPLY IN SUPPORT OF MANDAMUS AND CERTIORARI

Henry Merritt Farnum,
Petitioner

70 W. 46th Street,
New York 36, New York

May 28, 1958

IN THE

SUPREME COURT OF THE UNITED STATES

1957-1958 Term

No. 963--Certiorari
No. 716--Misc., Mandamus

Henry Merritt Farnum, Petitioner	*
v.	*
State of Connecticut	*
and	*
New York State Department of Mental Hygiene, Appellees	*

PETITIONER'S REPLY IN SUPPORT OF

MANDAMUS AND CERTIORARI

Federal Questions: the Ninth Amendment, and the Declaration of Independence

The only opposition to the petitions for mandamus and certiorari, is filed on behalf of appellee New York State Department of Mental Hygiene. That brief presents a single point: "no substantial federal question...." Yet the brief lacks a single reference to the only federal constitutional documents invoked by the petitioner. (Please note the petitions, page 7)

Federal Questions, New and Substantial

Five of the six federal questions present new issues before this Court. Each invokes the Civil Rights Act of 1957, upon the United States Constitutional basis of the Ninth Amendment and the Declaration of Independence.[1]

The other federal question, "Impairment of Jurisdiction of This Court", cites this Court to establish its jurisdiction to grant the petitions.

Both New York State and Connecticut invoked the power of confinement for an indeterminate period, including lifetime.

Therefore the federal questions are new and substantial.[2]

---

[1] Please note the six questions set forth in each petition, pages 5 and 6, and analyzed in sequence, pages 16 to 34.

[2] Those substantial questions answer appellee's conclusion on pages 7 and 8, "no substantial federal question...."

Medico-legal, statutory construction.

New York State cites its Mental Hygiene Law, sections 20 and 34 (9), as authority for the state's policy to claim discretion of the Commissioner or Court to withhold from the patient his own record. That policy places on the patient the burden of predicting the illegalities of that record without knowing its contents. That record

(Footnote continued, next page)

(Footnote 2, Continued)

presents the state's use of statutory authority under the state police power to detain the patient for an indeterminate period including lifetime.

Appellee defends that established policy upon the basis of the state legislative and judicial history to date. Petitioner challenges those provisions of the state statute for violation of the Ninth Amendment and the Declaration of Independence.

Original federal jurisdiction.

The District Court did not claim to exercise discretion in acceptance or denial of jurisdiction, but held against jurisdiction on the ground that no Constitutional question is presented. Please note page C-6 of the petitions.

The vital issue of right of access to federal courts is analyzed by the petitioner on pages 21 and 22 of the petitions.

Appellee's five citations of cases of habeas corpus present a different issue, with the additional question of the patient's health.

BECAUSE A SUBSTANTIAL FEDERAL QUESTION IS PRESENTED UNDER THE NINTH AMENDMENT AND THE DECLARATION OF INDEPENDENCE, THIS COURT SHOULD GRANT PLAINTIFF'S PETITION FOR MANDAMUS OR CERTIORARI.

Respectfully,

Henry Merritt Farnum,
Petitioner

70 W. 46th Street,
New York 36, New York.

May 28, 1958

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 963—CERTIORARI
No. 716—MISC.—MANDAMUS

HENRY MERRITT FARNUM,

Petitioner,

against

STATE OF CONNECTICUT

and

NEW YORK STATE DEPARTMENT OF MENTAL HYGIENE,

Appellees.

BRIEF IN OPPOSITION TO MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF CERTIORARI AND PETITION FOR WRIT OF MANDAMUS

LOUIS J. LEFKOWITZ,
Attorney General of the
State of New York,
Attorney for Appellee, New York
State Department of Mental Hygiene,
80 Centre Street,
New York 13, N. Y.

PAXTON BLAIR,
Solicitor General,

SAMUEL A. HIRSHOWITZ,
Assistant Attorney General,

HAROLD BORGWALD,
Assistant Attorneys General,
Of Counsel.

May 8, 1958

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In The

Supreme Court of the United States

October Term, 1957

No. 963—Certiorari
No. 716—Misc.—Mandamus

Henry Merritt Farnum,

Petitioner,

against

State of Connecticut

and

New York State Department of Mental Hygiene,

Appellees.

BRIEF IN OPPOSITION TO MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF CERTIORARI AND PETITION FOR WRIT OF MANDAMUS

The appellee opposes the petitioner's motions for leave to file a petition for a writ of certiorari and mandamus. United States District Court Judge Sylvester J. Ryan, Southern District of New York, on November 7, 1957, denied petitioner's motions made pursuant to 28 U.S.C. §§ 2281 and 2284 for the appointment of a three-judge court and for a declaratory judgment and injunctive relief, and dismissed the complaint.

Statutes Involved

1. Federal Statutes 28 U.S.C. §§ 2281 and 2284. The District Court denied petitioner's motions, made under these sections for the appointment of a three-judge court to enjoin the enforcement of a New York statute.

2. Federal Statutes

Civil Rights Statutes, 28 U.S.C. § 1343 as amended September 9, 1957. 42 U.S.C. §§ 1983, 1985. Fourteenth Amendment to the Constitution of the United States.

3. New York Statute

Section 34 of Article 3 of the New York Mental Hygiene Law relates to the powers and duties of the directors of state mental hospitals and Section 20 of Article 2 to the Record of patients and inmates. The Articles may be found in convenient form in McKinney's Consolidated Laws of New York Book 34-A.

The Order Below

The order of the United States District Court, Southern District (RYAN, D. J.,) November 7, 1957, in respect to which the writs are sought, determined that the challenged section of the State Mental Hygiene Law, which provides that records of patients shall be available only to the Director of the hospital and his designees and to the Commissioner and his representatives "except on the consent of the Commissioner or an order of a judge of a Court of Record", was not unconstitutional. Judge RYAN found that "This section does not operate to deprive either plaintiff or anyone else of constitutionally protected rights. There is no allegation that plaintiff has exhausted his available State administrative or judicial remedies". Judgment was entered dismissing the complaint on November 8, 1957.

The respondent's motion to dismiss the complaint and for denial of the application to convene a three-judge court was made on the grounds that the complaint failed to state a claim for relief; and on the further ground that the court lacked jurisdiction over the subject matter and the defendant.

Questions Presented

The petitioner seeks to present these questions:

1. Whether the District Judge erred in denying petitioner's motion to convene a three-judge court, in denying the motion for a declaratory judgment and injunctive relief, and in granting the motion of the respondent to dismiss the complaint.

2. Whether a substantial federal question was presented by petitioner's challenge to the constitutionality of sections 20 and 34 subdivision 9 of the New York Mental Hygiene Law, as applied to the petitioner.

Statement

The complaint, stating that petitioner (who resides in New York City) acts on his own behalf and also for all other persons similarily situated, arises under the Civil Rights Act as amended September 3, 1954, September 9, 1957; 28 U.S.C. Section 1343 and 42 U.S.C. Sections 1983, 1985 and other statutes. The complaint alleges in substance that: (*a*) for fourteen months from December, 1955 to February 15, 1957, plaintiff was confined in Manhattan State Hospital; (*b*) plaintiff was discharged from "convalescent care" July 25, 1957; (*c*) after that discharge, plaintiff requested opportunity to examine and to receive complete transcripts of the records, files and all other material relating to his confinement, and periods

subsequent thereto; (*d*) the refusal to transmit the requested records; (*e*) those requests were made by certified letters to the defendant and no part of them was offered; (*f*) that the orders by defendant to withhold from plaintiff the facts of record now secret, deprives plaintiff of liberty and property without due process of law and of other rights, privileges and immunities secured by the Constitution of the United States and by acts of Congress providing for equal rights of citizens, plaintiff accordingly prayed for:

(1) A permanent injunction against all orders by defendant withholding the requested records and

(2) A declaratory judgment determining the unconstitutionality and illegality of such orders by defendant.

ARGUMENT

No substantial federal question is presented by the motion for leave to file a petition for a writ of mandamus and certiorari.

1.

In *Matter of Warrington (State of New York)*, 303 N. Y. 129, 140 (1951), it was held "Upon that subject legislative history makes it clear that since 1896 the Legislature has been quite willing to leave to the discretion of 'a judge of a court of record' the inquiry whether the end to be achieved in a given case justifies the means afforded by the provisions of the Mental Hygiene Law cited above." (Mental Hygiene Law § 20, 34 subd. 9.) See also, *Matter of Lee* v. *State of New York*, 183 Misc. 615; Opinions of Attorney General 1944 page 288.

2.

The specific wrong alleged to be suffered by petitioner in violation of his constitutional and civil rights is the failure of the respondent to release to him (immediately and without Court order) all the records and reports relating to his commitment and confinement in the State Mental Hospital. Petitioner's contention is that Sections 20 and 34, subd. 9 of the State Mental Hygiene Law are basically unconstitutional. Petitioner broadly asserts that he was denied the equal protection of the law and equal privileges and immunities under the law, in violation of the Fourteenth Amendment and the Civil Rights Act. The pleaded facts belie this conclusion. The complaint is void of allegations that the purpose of the alleged refusal of the respondent, Department of Mental Hygiene or its director was to dicriminate between persons or classes of persons or that the Department's action was grounded in conspiracy. *Snowden* v. *Hughes,* 321 U. S. 1, 5, 8; rehearing denied 321 U. S. 804. Any claim, under § 1985 of the Civil Rights Act that a denial of equal protection of the law, is involved in this case, is plainly frivolous. *Tinsley* v. *Anderson,* 171 U. S. 101.

The procedure, set up by the State of New York under the challenged sections of the Mental Hygiene Law for examination of commitment and hospital records upon the "order of a judge of a Court of Record", gives a privilege to petitioner which he has not even sought to avail himself of. The Mental Hygiene Law is an exercise of the police power uniformly recognized as belonging to the State in providing care and protection for the mentally sick, as well as protection and safety for the general public.

In any view of the complaint, no federally protected rights are involved.

3.

Although a district court may have valid jurisdiction over a case either by reason of diversity of citizenship or a federal question, it has discretion in certain situations to determine whether it should accept that jurisdiction.

> "Equitable relief may be granted only when the District Court, in its sound discretion exercised with the 'scrupulous regard for the rightful independence of state governments which should at all times actuate the federal courts,' is convinced that the asserted federal right cannot be preserved except by granting the 'extraordinary relief of an injunction in the federal courts.' Considering that '[f]ew public interests have a higher claim upon the discretion of a federal chancellor than the avoidance of needless friction with state policies,' the usual rule of comity must govern the exercise of equitable jurisdiction by the District Court in this case. Whatever rights appellee may have are to be pursued through the state courts." *Alabama Public Service Commission* v. *Southern Ry.*, 341 U. S. 341, 349-50 (1951).

In Hawks v. *Hamill*, 288 U. S. 52, at page 61, Mr. Justice Cardozo said:

> "Only a case of manifest oppression will justify a federal court in laying such a check upon administrative officers acting *colore officii* in a conscientious endeavor to fulfill their duty to the state."

It was held in *Miller* v. *Director*, 146 F. Supp. 674 (S. D., N. Y. 1957), aff'd, 243 F. 2d 527 (C. A., 2nd Circ., 1957), that, apart from the general policies upon which the doctrine of exhaustion of state remedies is based, there are a number which are peculiarly applicable to the mental patient situation, and which hold that if the State has

provided adequate legislation for its function as *parens patriae* in relation to the mentally sick within its borders, and has provided protection for the individual involved, then the federal courts should not obstruct the administration of such State laws. *In re Huse*, 79 F. 305, 306 (C.C.A. 9, 1897); *Hall* v. *Verdel*, 40 F. Supp. 941 (W. D. Va., 1941); *In re Ryan*, 47 F. Supp. 10 (E. D. Pa., 1942); *Ex parte Moore*, 43 F. Supp. 886 (D. Oregon, 1942).

4.

Since the New York Courts are the courts best qualified to interpret the acts of its legislature and to determine the propriety of interference by injunction with the enforcement of its Mental Hygiene Law, it is clear that Judge Ryan had the power, without convening a three-judge court, to ascertain whether a substantial federal question was presented, and to dismiss the petitioner's complaint for want of jurisdiction when it appeared to him that the question lacked the necessary substance. Nothing has been shown herein which would have justified the District Court in concluding that the New York Courts would disregard any right the petitioner has under the Federal Constitution or Civil Rights Acts, as amended.

In the instant case, the contention of the petitioner comes within the language of this Court in *Ex Parte Poresky*, 290 U. S. 30, at page 32, wherein, upon the authority of many cases, it was declared a question is unsubstantial when

> "its unsoundness so clearly results from the previous decisions of this court as to foreclose the subject and leave no room for the inference that the question sought to be raised can be the subject of controversy".

Therefore, it is evident, that Judge Ryan acted correctly when he declined to convene a three-judge court to con-

sider the questions presented by the petitioner's complaint. *Stainback* v. *Mo Hock Ke Lok Po*, 336 U. S. 368; *Linehan* v. *Waterfront Commission of New York Harbor*, 116 Fed. Supp. 401 aff'd, 347 U. S. 439; *New Jersey Chiropractic Ass'n* v. *State Board*, 79 Fed. Supp. 327.

CONCLUSION

Since no substantial federal question is presented, this Court should deny the petitioner's motions for leave to file a petition for a writ of certiorari and a writ of mandamus.

Dated: New York, N. Y., May 8, 1958.

Respectfully submitted,

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